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SUPREME COURT OF JUDICATURE ACTS

1873 AND 1875.

THE
SUPREME COURT OF JUDICATURE ACTS
1873 AND 1875.

Schedule of Rules and Forms,

AND OTHER

RULES AND ORDERS.

WITH NOTES.

By ARTHUR WILSON,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

LONDON:
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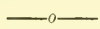
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PREFACE.



A FEW words in explanation of the plan of this book may facilitate its use.

The Supreme Court of Judicature Act, 1873, contains enactments affecting, first, the organisation of the Court; secondly, the substance of the law; thirdly, Procedure; though as this division is far from an exact one many sections properly fall under more than one of these heads. The Act of 1875 contains in the main alterations of or additions to the earlier Act in points falling under the first two heads; but it also contains sections affecting procedure, as well as some miscellaneous matters. The Schedule of Rules appended to the latter Act contains the great bulk of the provisions relating to Procedure.

The enactments to be considered being thus scattered over two Acts and a Schedule, besides some additional Rules since issued, I have endeavoured to find a plan by which, without departing from the sequence of the Acts, or attempting to consolidate what the Legislature has not consolidated, a reader may yet always be enabled to find the whole of the provisions upon any one subject grouped together. Accordingly, in handling the Act of 1873, those sections which deal with Procedure have been merely given in their order, with seldom more than a reference to the rules relating to the same subject. But under each of the sections which affect the organisation of the Courts, or matters of substantive law, it has been sought to show the whole of the provisions of the new legislation upon the subject matter. Any parts of the section repealed are indicated by italics; the substituted or amending section of the later Act is printed underneath; and such notes are added as seemed likely to be useful. In like manner, in dealing with the Schedule of Rules, all sections of either Act relating to Procedure are reprinted

immediately after the Rules upon the same subject. This method involves printing many things twice over. But it seems to secure that a reader can commonly find the whole of the provisions he wants at once.

The Rules of Procedure in the Acts and Schedule are in some cases entirely new. Where this is so I have pointed it out, and, if it seemed necessary, endeavoured to explain their effect. In some cases they are adopted from the existing rules of some of the Courts, but with substantial modifications. In such cases I have sought to show the effect of the modifications, and for that purpose it has sometimes been necessary to examine in considerable detail the existing practice and past decisions. In many cases, again, a rule is simply adopted without alteration from that hitherto in force either in the Common Law Courts or in Chancery. In such cases I have thought it best merely to show the source from which the rule is taken, and the books in which it may be found discussed, and not to set out the decisions and authorities affecting it. Any other course was unnecessary, for all that is needed has already been done in Mr. Day's edition of the Common Law Procedure Acts, and Mr. Osborne Morgan's Chancery Acts and Orders. And it would have been almost impossible to go over the ground already traversed by those writers without unduly appropriating the fruits of other men's labours.

I am indebted to my learned friend, Mr. W. M. Fawcett, of the Chancery Bar, for reading the sheets of this book during its progress through the press, and for many valuable suggestions. And I have to thank my learned friend, Mr. Francis Parker, of the Home Circuit, for the preparation of the Index.

A. W.

TEMPLE, *September*, 1875.

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INTRODUCTION.

ORIGIN OF THE JUDICATURE ACTS.

IN the year 1867 a Royal Commission was appointed to inquire into the operation and effect of the present constitution of the Court of Chancery, the Superior Courts of Common Law, the Central Criminal Court, the High Court of Admiralty, the Admiralty Court of the Cinque Ports, the Courts of Probate and of Divorce, the Courts of Common Pleas of Lancaster and Durham, and the Courts of Error and of Appeal from all of these Courts; and into “the operation and effect of the present separation and division of jurisdictions between the said several Courts; and also into the operation and effect of the present arrangements for holding the sittings in London and Middlesex, and the holding of Sittings and Assizes in England and Wales, and of the present division of the legal year into terms and vacations, and generally into the operation and effect of the existing laws and arrangements for distributing and transacting the judicial business of the said Courts respectively, as well in Court as in Chambers, with a view to ascertain whether any and what changes and improvements,—either by uniting and consolidating the said Courts or any of them, or by extending or altering the several jurisdictions, or assigning any matters or causes now within their respective cognizance to any other jurisdiction, or by altering the number of judges in the said Courts, or any of them, or empowering one or more judges in any of the said Courts to transact any kind of business now transacted by a greater number, or by altering the mode in which the business of the said Courts or any of them, or of the Sittings and Assizes, is now distributed or conducted, or otherwise,—may be advantageously made so as to provide for the more speedy, economical, and satisfactory despatch of the judicial business now transacted by the same Courts, and at the Sittings and Assizes respectively;

and further to make inquiry into the laws relating to juries, especially with reference to the qualification, summoning, nominating, and enforcing the attendance of jurors, with a view to the better, more regular, and more efficient conduct of Trials by Jury and the attendance of jurors at such trials."

The first report of the Commissioners was issued in March, 1869. In 1870 Lord Hatherley introduced in the House of Lords a bill intended to give effect to their recommendations. That bill, however, after much and useful discussion, was withdrawn. In 1873 Lord Selborne, who had succeeded to the Chancellorship, framed and introduced a bill which, with but little alteration, became law, as the Supreme Court of Judicature Act, 1873.

That Act provided for the constitution and jurisdiction of the several branches of the Supreme Court, and the consolidation of the law.

In its schedule it laid down the outlines of a system of procedure, which were to be binding, until altered by the body of judges after the Act came into operation. And the Act empowered the Queen in Council, on the advice of the judges, to issue rules to complete the system of procedure, of which the schedule gave the outlines.

Rules were accordingly framed and approved by the judges, and issued for the information of the public in the summer of 1874. But in that year an Act was passed postponing the operation of the Judicature Act to November, 1875, a year later than it was originally intended that it should take effect.

The Amendment Act of 1875 has altered the effect of the principal Act in some respects, the most important of which is the constitution of the Court of Appeal. It has supplemented its provisions in many particulars, supplied some omissions, and removed some blots. In its schedule it has inserted in a consolidated form the rules comprised in the original schedule to the principal Act, and those prepared by the judges under the powers given them by that Act, with some modifications. The rules in this schedule so composed are to be of binding force unless altered by the body of judges after the commencement of the Act in November, 1875. But power was given to the Queen in Council, with the advice of the judges, to issue

further or additional rules. And under this power some additional rules have been framed and issued, relating chiefly to costs and other matters directly connected therewith.

NECESSITY FOR CONSOLIDATION OF THE COURTS.

The Judicature Commissioners in their report called attention first to the ancient division of the Courts into the Courts of Common Law, and the Court of Chancery, founded on the well known distinction in our law between Common Law and Equity.

“This distinction led to the establishment of two systems of Judicature, organized in different ways, and administering justice on different and sometimes opposite principles, using different methods of procedure, and applying different remedies. Large classes of rights, altogether ignored by the Courts of Common Law, were protected and enforced by the Court of Chancery, and recourse was had to the same Court for the purpose of obtaining a more adequate protection against the violation of Common Law rights than the Courts of Common Law were competent to afford. The Common Law Courts were confined by their system of procedure in most actions,—not brought for recovering the possession of land,—to giving judgment for debt or damages, a remedy which has been found to be totally insufficient for the adjustment of the complicated disputes of modern society. The procedure at Common Law was founded on the trial by jury, and was framed on the supposition that every issue of fact was capable of being tried in that way; but experience has shown that supposition to be erroneous. A large number of important cases frequently occur in the practice of the Common Law Courts which cannot be conveniently adapted to that mode of trial; and ultimately those cases either find their way into the Court of Chancery, or the Suitors in the Courts of Common Law are obliged to have recourse to private arbitration in order to supply the defects of their inadequate procedure.

“The evils of this double system of Judicature, and the confusion and conflict of jurisdiction to which it has led, have been long known and acknowledged.

“The subject engaged the attention of the Commissioners appointed in 1851 to inquire into the constitution of the Court of Chancery. Those learned Commissioners, after pointing out

some of the defects in the administration of justice arising out of the conflicting systems of procedure and modes of redress adopted by the Courts of Common Law and Equity respectively, state their opinion, that ‘a practical and effectual remedy for ‘for many of the evils in question may be found in such a ‘transfer or blending of jurisdiction, coupled with such other ‘practical amendments, as will render each Court competent to ‘administer complete justice in the cases which fall under its ‘cognizance.’

“In like manner the Commissioners appointed in 1850 to inquire into the constitution of the Common Law Courts make, in their second report, a very similar recommendation. They report that ‘it appeared to them that the Courts of Common ‘Law, to be able satisfactorily to administer justice, ought to ‘possess in all matters within their jurisdiction the power to ‘give all the redress necessary to protect and vindicate Common ‘Law rights, and to prevent wrongs, whether existing or likely ‘to happen unless prevented ;’ and further that ‘a consolidation ‘of all the elements of a complete remedy in the same Court ‘was obviously desirable, not to say imperatively necessary, to ‘the establishment of a consistent and rational system of pro- ‘cedure.’

“In consequence of these reports several Acts of Parliament have been passed for the purpose of carrying out to a limited extent the recommendations of the Commissioners.

“By virtue of these Acts the Court of Chancery is now, not only empowered, but bound to decide for itself all questions of Common law without having recourse, as formerly, to the aid of a Common Law Court, whether such questions arise incidentally in the course of the suit, or constitute the foundation of a suit, in which a more effectual remedy is sought for the violation of a common law right, or a better protection against its violation than can be had at Common Law. The Court is further empowered to take evidence orally in open Court, and in certain cases to award damages for breaches of contract or wrongs as at Common Law ; and trial by jury,—the great distinctive feature of the Common Law,—has recently, for the first time, been introduced into the Court of Chancery.

“On the other hand, the Courts of Common Law are now

authorized to compel discovery in all cases, in which a Court of Equity would have enforced it in a suit instituted for the purpose. A limited power has been conferred on Courts of Common Law to grant injunctions, and to allow equitable defences to be pleaded, and in certain cases to grant relief from forfeitures. These changes, however, fall far short of the recommendations of the Common Law Commissioners, who in their Final Report expressed the opinion, that power should be conferred on the Common Law Courts 'to give, in respect of rights there recognized, all the protection and redress which at present can be obtained in any jurisdiction.'

"The alterations, to which we have referred, have no doubt introduced considerable improvements into the procedure both of the Common Law and Equity Courts; but, after a careful consideration of the subject, and judging now with the advantage of many years experience of the practical working of the systems actually in force, we are of opinion that 'the transfer or blending of jurisdiction' attempted to be carried out by recent Acts of Parliament, even if it had been adopted to the full extent recommended by the Commissioners, is not a sufficient or adequate remedy for the evils complained of, and would at best have mitigated but not removed the most prominent of those evils.

"The authority now possessed by the Court of Chancery to decide for itself all questions of Common Law has no doubt worked beneficially. But the mode of taking evidence orally before an Examiner, instead of before the Judge who has to decide the case, has justly caused much dissatisfaction; and Trial by Jury,—whether from the reluctance of the Judge or of the Counsel to adopt such an innovation, or from the complexity of the issues generally involved in the suit, or because the proceedings in Chancery do not give rise to so many conflicts of evidence as proceedings in other Courts,—has been attempted in comparatively few cases.

"In the Common Law Courts the power to compel discovery has been extensively used, and has proved most salutary; but the jurisdiction conferred on those Courts to grant injunctions and to allow equitable defences to be pleaded has been so limited and restricted,—the former extending only to cases

where there has been an actual violation of the right, and the latter being confined to those equitable defences where the Court of Chancery would have granted a perpetual and unconditional injunction,—that these remedies have not been of much practical use at Common Law; and Suitors have consequently been obliged to resort to the Court of Chancery, as before, for the purpose of obtaining a complete remedy.

“Much therefore of the old mischief still remains, notwithstanding the changes which have been introduced; and the Court of Chancery necessarily continues to exercise the jurisdiction of restraining actions at law on equitable grounds, and even claims to exercise that jurisdiction in cases where an equitable defence might be properly pleaded at Common Law.”

The report further called attention to the somewhat similar anomalies in the relation of the Common Law Courts to the Court of Admiralty.

The report proceeded to say:—

“We are of opinion that the defects above adverted to cannot be completely remedied by any mere transfer or blending of jurisdiction between the Courts as at present constituted; and that the first step towards meeting and surmounting the evils complained of will be the consolidation of all the Superior Courts of Law and Equity, together with the Courts of Probate, Divorce, and Admiralty, into one Court, to be called ‘Her Majesty’s Supreme Court,’ in which Court shall be vested all the jurisdiction which is now exercisable by each and all the Courts so consolidated.

“This consolidation would at once put an end to all conflicts of jurisdiction. No suitor could be defeated because he commenced his suit in the wrong Court, and sending the suitor from equity to law, or from law to equity, to begin his suit over again in order to obtain redress, will be no longer possible.

“The Supreme Court thus constituted would of course be divided into as many Chambers or Divisions as the nature and extent or the convenient despatch of business might require.

“All suits, however, should be instituted in the Supreme Court, and not in any particular Chamber or Division of it; and each Chamber or Division should possess all the jurisdiction of the Supreme Court with respect to the subject-matter of the

suit, and with respect to every defence which may be made thereto, whether on legal or equitable grounds, and should be enabled to grant such relief or to apply such remedy or combination of remedies as may be appropriate or necessary in order to do complete justice between the parties in the case before the Court, or in other words, such remedies as all the present Courts combined have now jurisdiction to administer.

“We consider it expedient, with a view to facilitate the transition from the old to the new system, and to make the proposed change at first as little inconvenient as possible, that the Courts of Chancery, Queen’s Bench, Common Pleas, and Exchequer should for the present retain their distinctive titles, and should constitute so many Chambers or Divisions of the Supreme Court ; and as regards the Courts of Admiralty, Divorce and Probate, we think it would be convenient that those Courts should be consolidated, and form one Chamber or Division of the Supreme Court.”

THE SUPREME COURT.

The Judicature Act consolidates into one Court, under the name of the Supreme Court, the Court of Chancery, the Superior Courts of Common Law, the Court of Admiralty, and the Courts of Probate and Divorce. The Supreme Court however, as such, will exercise no jurisdiction. It is divided into the High Court of Justice and the Court of Appeal.

THE HIGH COURT AND ITS JURISDICTION.

To the High Court is transferred the whole of the original jurisdiction of the Court of Chancery, the Superior Courts of Common Law, the Court of Admiralty, the Courts of Probate and Divorce, the Courts of Common Pleas of Lancaster and Durham, and the Courts held under Commissions of Assize and like Commissions. To it are also assigned County Court Appeals and others from Inferior Courts.

It is to be composed in the first instance of the Lord Chancellor, the Master of the Rolls and the Vice-Chancellors, and the Judges of the Courts of Common Law, of Admiralty, and Probate and Divorce. The permanent number of Judges is to be twenty-five.

The Court is divided into five divisions, corresponding to, and perpetuating, in accordance with the advice of the Commissioners, the names of the Courts of Chancery, Queen's Bench, Common Pleas, Exchequer, and Probate, Divorce, and Admiralty, the last mentioned Courts forming one division. But any judge may sit in a Court belonging to any division or for any other judge.

DISTRIBUTION OF BUSINESS.

Every branch of the Court has power to entertain and give effect to any claim, to recognize any right, and to apply any remedy which any one of the Courts consolidated by the Acts could heretofore have done. In some cases too, more extensive powers of relief are given than have hitherto been exercised by any Court.

But as matter of convenience, and subject to any rule which may hereafter be made altering the distribution now laid down, the Act of 1873 assigns some kinds of litigation to particular divisions of the Court; while in others it leaves it to the unfettered discretion of the suitors to choose their division.

To the Chancery Division are assigned matters within the special statutory jurisdiction of the Court of Chancery, Administration of Estates, Partnership, Redemption and Foreclosure, Raising of Portions, Liens and Charges, Execution of Trusts, Rectification of Settlements, Specific Performance, Partition, Wardship of Infants.

To the other Divisions are assigned all matters hitherto within the exclusive cognisance of the Courts corresponding to those divisions respectively.

In all cases not falling within any of these categories the plaintiff is left free to choose to which division of the Court he will assign his action.

A mistake on the part of the plaintiff in assigning his action to the wrong division will in no case be fatal; he can never be required to begin over again. It will be at most a reason for transferring the action in the stage at which it is found to the division in which it ought regularly to have been commenced.

TRANSFER OF ACTIONS.

No Court and no branch of the Court will, for the future, have any power to restrain proceedings in any other. But, in the first place, anything which would hitherto have been ground for an injunction to restrain proceedings may be relied on by way of defence, or as a reason for staying proceedings. And, in the second place, very large powers of transfer are given to the Court.

If an action, which ought by the terms of the Act properly to be assigned to a particular division, is brought in another, it will be in the discretion of the Court or a judge of the division in which the action is pending, either to allow it to proceed where it is, or to transfer it to the division to which it more properly belongs.

And, further, quite apart from any question of the assignment of the action to its proper division in the first instance, any action may, at any stage, be transferred from one division to another by a judge of the division in which it is pending, with the consent of the President of the division to which it is proposed to transfer it, or by the Lord Chancellor with the consent of the Presidents of both the divisions concerned.

THE COURT OF APPEAL AND ITS JURISDICTION.

The Court of Appeal is to consist of five ex-officio and three ordinary judges. The ex-officio judges are the Lord Chancellor, the Chief Justice of England, the Master of the Rolls, the Chief Justice of the Common Pleas, and the Chief Baron of the Exchequer. The first ordinary judges are to be the present Lords Justices and one other person to be appointed. Power is also given to the Lord Chancellor to call for the attendance of one judge from each of the Queen's Bench, Common Pleas, Exchequer, and Probate, Divorce, and Admiralty Divisions as additional judges of the Court of Appeal.

To this Court is transferred all the jurisdiction of the Court of Appeal in Chancery, including Bankruptcy Appeals; of the Court of Appeal in Chancery of Lancaster; of the Court of the Lord Warden of the Stannaries; of the Exchequer Chamber; of the Privy Council in Admiralty Appeals, and Appeals from Orders in Lunacy.

But, in fact, the jurisdiction of the Court of Appeal is much wider than any mere transfer of existing jurisdiction could make it. In the Common Law Courts the cases in which error or an appeal lay to the Exchequer Chamber were very few. A great proportion of decisions of the Court were final. A Bill of Exceptions lay to the Exchequer Chamber, where a judge's ruling at *Nisi prius* was wrong. Error lay where a miscarriage appeared upon the face of the record itself, or upon a special case. An appeal lay from a decision refusing, or discharging, or making absolute a rule for a new trial, or to enter a verdict, or nonsuit, if leave was reserved at the trial, or the Court was divided, or leave to appeal was given. But in other cases no appeal lay.

The new Court of Appeal will have jurisdiction to hear an appeal from any judgment or order whether final or interlocutory of the High Court, or any judges or judge of that Court, except where it has been made by consent, or relates to costs only when discretionary, and except judgments in Criminal Appeals, and in Appeals from Inferior Courts, unless, in the last mentioned case, leave to appeal be given.

By the Judicature Act, 1873, the decisions of the Court of Appeal were to be final, and all recourse to any Higher Court of Appeal was taken away. But the Act of 1875 has suspended for a year the operation of the sections affecting this. And for that time a further appeal to the House of Lords is preserved.

SITTINGS OF THE COURTS.

The old division of the year, into terms and what was not term, has long been a source of inconvenience. The terms have been far too short for the sittings of any Court to be limited in their duration to term time. Yet there have been, in the Common Law Courts especially, many applications which could not be made except during term, although the Courts in banc might be sitting. It was a serious evil that the remedial power of any Court while actually sitting should be curtailed merely because a certain day of the month was passed. And this evil it was clearly desirable to get rid of. But to have retained the titles of the terms without any real distinction between term and sittings out of term would have been to preserve an empty name corresponding to no substantial reality.

Terms are accordingly abolished. There will be four sittings in the year, both for the High Court and the Court of Appeal:—The Michaelmas Sitting, beginning November 2nd and ending December 21st; the Hilary Sitting, beginning January 11th and ending the Wednesday before Easter; the Easter Sitting, beginning the Tuesday after Easter week and ending the Friday before Whitsunday; and the Trinity Sitting, beginning the Tuesday after Whitsun week and ending August 8th.

The vacations will be the Long Vacation, beginning August 10th and ending October 24th; Christmas Vacation, beginning December 24th and ending January 6th; Easter Vacation, beginning on Good Friday and ending on Easter Tuesday; and Whitsun Vacation, beginning on the Saturday before Whitsunday and ending on the Tuesday after Whitsunday.

The Judicature Act, 1873, expressly provides that sittings for trial by jury of causes and issues shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many judges as the business to be disposed of may render necessary. Single judges as in the Chancery Division, and the Court of Appeal, will, it may be presumed, sit during the whole of the sittings of the Courts. With regard to sittings of Divisional Courts some further arrangement may be found necessary, for during the circuits it might be difficult, and it might not be found requisite, to have Divisional Courts continuously sitting.

The power given by the Act is very wide:—"Subject to Rules of Court, the High Court of Justice and the Court of Appeal, and the judges thereof respectively, or any such commissioners as aforesaid (*i.e.*, Commissioners of Assize) shall have power to sit and act, at any time and at any place, for the transaction of any part of the business of such Courts respectively, or of such judges or commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term."

Provision is made for the appointment each year of two vacation judges of the High Court to hear during vacation all applications requiring immediate attention. The vacation judges may sit either together as a Divisional Court or separately.

LAW TO BE ADMINISTERED, AND RELIEF GIVEN.

The contrast and even conflict between the law applied in the several Courts now consolidated, and more especially in the Court of Chancery and the Common Law Courts, is forcibly pointed out in the passage already cited from the report of the Judicature Commission.

The differences between law and equity are of three kinds.

In the first place, Equity Courts, even where recognising and enforcing exactly the same primary rights and liabilities as the Common Law Courts, have applied different remedies to protect and enforce them. And much of the value of the chancery system has depended upon the efficiency of these remedies. Where the common law could award damages for a wrong when committed, equity could prevent its commission. Where law could give damages for a breach of contract, equity could enforce its specific performance. Where law could give damages for fraud or breach of faith, equity could declare the property affected by it to be held in trust for, in fact to be property of, the injured party.

Somewhat similar diversities in respect of the extent of the remedy they could give have existed between the Common Law and Admiralty Courts.

Under the new system, it will be within the power, and it will be the duty of any branch of the Court before which any case arises to give any appropriate relief or remedy which could heretofore have been given by any Court to all or any of the parties to the action.

In the second place, Equity recognises and enforces rights and duties of which the Common Law Courts take no notice. The law recognises only the trustee, or the executor, or other legal owner of property in which many other persons may be beneficially interested, or as to which they may have equitable rights. Equity enforces the equitable rights. In such cases law and equity cannot be properly said to conflict. Equity supplements the law. In very many instances the distinction between the two kinds of ownership, the legal ownership of the trustee who represent and acts for the whole group of persons interested, and the beneficial ownership of the individuals so interested, is obviously useful and even necessary. What has been neither

necessary nor useful, is that one of the two classes of rights should be ignored by some courts, and enforced only by others. Under the new system, subject to the power of transfer, every equitable ground of claim is to be recognised and enforced in any division of the Court. Every equitable matter of defence or answer is to have full effect given to it in any division. All equitable rights and duties appearing incidentally, are to be taken due account of in any Division. And subject to those provisions, all Divisions are to give due effect to all legal rights.

In the third place, there are some cases in which the rules of law and equity actually conflict; and to a less extent the same thing is true as to the Common Law and Admiralty Courts, and as to the Courts of Chancery and Bankruptcy. The Judicature Act goes through, one by one, a number of the points upon which such a conflict of law has existed, and enacts what the law is to be for the future. And it then declares in general terms that in all cases not specifically provided for, in which there is any conflict or variance between the rules of law and equity, equity is to prevail.

THE SUBJECT MATTER OF AN ACTION.

The only question which a Common Law Court has till now been able to entertain, has been:—Was the plaintiff absolutely entitled on a given day to recover money by way of debt or damages, or to recover goods, or land from the defendant. But any number of separate claims of debt or damages, or for the recovery of goods, if by and against exactly the same parties, and in the same right, might be disposed of in one action. A large majority of cases in which the aid of a Court of Law is needed are of a very simple character, in which, though restricted in the manner pointed out, the Common Law Courts have been apt to do full justice between the parties. But the minority has not been small, in which a decision upon the specific claim of one man against another would be of little service, in which what was really needed was to treat an entire transaction as a whole, bring all necessary persons before the Court, and adjust and enforce the various rights of all parties. With such cases Common Law Courts have been powerless to deal. The practice has been to refer them to arbitration.

The Chancery principle, on the other hand, has been to deal with every controversy as a whole, to insist on all persons concerned being brought before it, and to endeavour to do full justice between all parties. There has been no power simply to settle a specific claim of one person against another, leaving the rights of other parties to the transaction to be settled hereafter if any question should happen to arise about them.

But the suit must have been limited to one subject matter; otherwise it would be open to objection on the ground of multifariousness.

For the future every branch of the Court will have all the jurisdiction hitherto vested in any of the Courts consolidated. It follows, therefore, that the Court at the instance of a plaintiff can enforce his specific claim against a particular person as the Common Law Courts have hitherto done; or, if asked to do so, can deal with the whole transaction out of which the claim arises, and settle the rights of all parties concerned. And it is further, on the one hand, expressly provided by the Act that the Court may apply all remedies in respect of any claim, legal or equitable, to which any of the parties may be entitled, so that all matters in controversy may be determined and multiplicity of actions avoided. It is, on the other hand, provided by the rules that an action is not to be defeated by misjoinder of parties, but the Court may deal with the matter in controversy so far as regards the rights of the parties actually before it. Further specific provisions are contained in the rules tending to the same latitude of choice as to the subject-matters which a plaintiff may elect to bring before the Court in an action. Claims by plaintiffs jointly may be combined with claims by them or any of them severally against the same defendant. The defendants need not all be interested as to all the relief claimed or as to every cause of action. Claims by and against parties in their individual capacity may, speaking generally, be joined with claims by and against them in a representative capacity. And with few exceptions, any number of causes of action may be combined in one action, subject to the power of a judge to prevent injustice or inconvenience by an incongruous mixture of claims in one trial.

To the defendant also a wide latitude is given as to the

matters which he may bring before the Court. Not only may he raise any legal or equitable defence, in the strict sense of the term, but his right of set off is largely increased. Hitherto the only set off allowed has been a set off of debt against debt. If either the plaintiff's claim, or the defendant's cross claim was by way of damages, there was no set off, even though the amount of damages might be a mere matter of calculation. For the future the right of set off will exist whether the claims be for debt or for damages.

But the defendant's right will not be limited to merely setting off his claim against that of the plaintiff. He may by way of counter-claim set up against the plaintiff any claim, and seek any relief which he could have made the ground of a cross action at law or suit in Equity. And any relief to which he may prove entitled may be awarded to him. And if, in the case of pecuniary claims, it appear that the ultimate balance is in his favour, judgment may be given for him for that balance.

Nor does the defendant's right stop here. He may not only by his counter claim seek relief against the plaintiff, he may claim like relief, if only it relate to or be connected with the original subject of the action, against any third person whether already a party to the action or not. And provision is made for bringing in the necessary new parties.

PARTIES.

As soon as it is seen that the Court is free to consider in an action all claims of the kinds already pointed out, and to give to all or any of the parties such relief as they are entitled to and have properly claimed, it follows by a logical necessity that a corresponding freedom must be allowed in the selection of parties to an action. Accordingly the rules provide that all persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And all persons may be joined as defendants against whom the right to any relief is alleged to exist jointly, severally, or in the alternative. And many other provisions are added, several of which have been already referred to, for carrying out the same liberal doctrine.

At the same time the practice long in use in the Court of

Chancery of allowing one person to sue or defend on behalf of a class, where there are many persons having the same interest, is extended to all divisions of the Court; as is also the Chancery practice as to suits by and against married women.

The provisions of 15 and 16 Viet. c. 86, s. 42, hitherto in force in the Court of Chancery, for the purpose of avoiding the unnecessary multiplication of parties are also adopted: *post*, p. 196.

An entirely new system is introduced in the case of actions by or against partners. They may for the future sue and be sued in the name of their firm; instead of the partners being necessarily made parties to the action by their individual names.

CHANGE OF PARTIES.

It often happens, however, that after an action has been duly instituted between certain parties, it becomes necessary to bring new persons before the Court, or to discharge from the suit some of those who were originally parties. The necessity for this may arise in several ways:—

- i.—The plaintiff may have made a mistake in the selection of parties when originally instituting his action. He may have omitted some one who ought to have been made a party, or joined some one who ought not to have been joined. It has already been seen that such a mistake will not be fatal, but that the Court may dispose of the matters in controversy, so far as concerns the parties before it. But, full power is also given to amend such a defect, by adding or striking out parties. And this power may be exercised at the trial as well as before.
- ii.—Even where the parties to an action have been rightly chosen in the first instance, it may well happen that from the death, marriage, or bankruptcy of a party, the birth of some one becoming interested, or the transmission of interest from one person to another, during the progress of the suit the proper parties are no longer all of them before the Court. Both in the Common Law Courts and in the Court of Chancery, simple and inexpensive methods have long been in use for curing supervening defects of this nature. The Chancery

practice has in the new rules been adopted. Under it, an order may be obtained *ex parte* to proceed with the action between the continuing parties and the parties whom it has become necessary to introduce. This order so obtained, will be served upon the proper parties. And unless application be made within twelve days to discharge the order, it will bind those served with it.

iii.—A person originally no party to the action is sometimes allowed to intervene and of his own accord make himself a party to it, on the ground that he is interested in the subject matter of the action. The right of intervention, which fills so large a space in some foreign systems of procedure, is admitted in our system only in a very few cases. The Judicature Acts and rules have made no change in the law in this respect.

In a Probate action any person interested in the estate of the deceased may intervene.

In an Admiralty action *in rem*, any person interested in the *res* may intervene.

In an action for the recovery of land, as hitherto in an action of Ejectment, any person who claims to be in possession by himself or his tenant may intervene.

The power of intervention in a suit for divorce is in no way affected by the acts or rules.

iv.—It has already been shown that a defendant in any action may not only seek by way of counterclaim, against the plaintiff who is suing him, any relief which he might obtain in a cross action, but may also seek like relief relating to or connected with the subject matter of the action, against any other person, whether already a party to the action or not. On this ground it may become necessary, on behalf of the defendant, to bring before the Court persons not previously parties. This is provided for by the Act of 1873 and the rules.

v.—There is yet another ground upon which it may be desirable for a defendant to bring in third persons and make them parties to the action. It may well be that

the defendant does not seek and is not entitled to claim any actual relief in the pending action as against any person not already a party to it. But there may yet be some one against whom, if himself found liable in the action, he may have a right to demand a contribution or indemnity or other remedy over. He may be sued as a surety and if found liable, may be entitled to contribution from a co-surety. He may be sued upon a contract which he made as agent for another person, and may be entitled to be indemnified by his principal. In such cases it is obviously desirable to bring in the person against whom the defendant will ultimately have to seek his remedy, so as to secure a decision as to the defendant's liability in the present action, which shall be binding and conclusive upon such person when in a subsequent proceeding the now defendant seeks his remedy against him. This case is also provided for.

COMMENCEMENT OF ACTIONS—WRIT.

Actions at law have been commenced by a writ of summons, a simple document calling upon the defendant to appear, and not necessarily doing anything more. And experience has abundantly shown the advantage of this method of procedure. For in a very large proportion of cases the mere service of a writ is found to be sufficient either to bring the defendant to submission, or to lead to a settlement of the claim.

Admiralty suits and generally those in the Probate Court have been commenced by methods very much analogous to the proceeding by writ. But in the Court of Chancery the suit has been instituted by the expensive process of filing a Bill; so that it has been necessary thoroughly to investigate the plaintiff's case in detail, and set it out in the form of a printed pleading, as the very first step in the cause; expenses which under the simpler mode of proceeding might often be avoided altogether.

The procedure by writ now universally adopted has nothing in common with the former writ of subpœna in Chancery, issued after the bill was filed; that is to say after it was too late to be of any service, and when it became merely a useless expense.

Hitherto when an action was brought to recover possession of land, a special form of writ of ejectment has been used; and the proceedings in such an action have been materially different from those in other actions. For the future there will be no special form of writ for such cases; and with few exceptions the proceedings are assimilated to those in other actions.

INDORSEMENT OF CLAIM.

For the future the writ of summons is not to be a mere summons to appear; it is to be "indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action."

There will no doubt be many advantages in having the controversy to be raised in the action thus formally identified on the back of the writ. And some specific economies are effected by means of it. For example, damages may be assessed in case of default of appearance, upon the basis of the indorsement, without any pleading.

It seems, however, of great importance that the utmost generality of statement should be permitted and practised in such indorsements. If anything like a precise statement of facts were required, it would be necessary to investigate the case in detail, and if a correct statement of the legal grounds of claim were required, it would often be further necessary to take counsel's opinion, before issuing a writ. And so the object of the procedure by writ would be to a great extent defeated. Accordingly the rules provide that "it shall not be necessary to set forth the precise ground of complaint, or the precise remedy or relief" sought. And the forms of indorsement are very general in their terms, as for instance:—

The plaintiff's claim is as a creditor of *X.Y.*, of _____ deceased to have the [real and] personal estate of the said *X.Y.* administered. The defendant *C.D.* is sued as the administrator of the said *X.Y.* [and the defendants *E.F.* and *G.H.* as his co-heirs-at-law].

The plaintiff's claim is _____ *l.* for the price of goods sold.

[*This Form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.*]

The plaintiff's claim is _____ *l.* for money lent [*and interest*].

The plaintiff's claim is for damages for libel.

The plaintiff's claim is for damages for slander.

The plaintiff's claim is in replevin for goods wrongfully distrained.

The plaintiff's claim is for damages for improperly distraining.

[This Form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.]

SPECIAL INDORSEMENTS AND THEIR CONSEQUENCES.

In addition to the indorsement of claim which is required to be upon every writ, the plaintiff may in certain cases indorse his writ specially. Such special indorsements are of two kinds.

First, where the claim is merely for a debt or liquidated money claim, the plaintiff may state on his writ the particulars of his claim. This is in accordance with the practice under the C. L. P. Act 1852, except that the use of such an indorsement is extended to the case of a sum of money claimed by reason of a trust.

Where the writ is so indorsed, the plaintiff may in case of default sign final judgment, as hitherto, for the amount indorsed. But, further, (and this right is new) if the defendant appears, the plaintiff may nevertheless, upon a summons taken out for the purpose, obtain an order for final judgment, unless the defendant can show that he has a defence to the action, or sufficient reason why he should be allowed to defend. This is an extension of the principle of the Bills of Exchange Act, though the machinery adopted is different. It must be observed that the right to proceed under the Bills of Exchange Act is preserved.

Secondly, in all cases of ordinary account, as a partnership, executorship, or ordinary trust account, the plaintiff may indorse a claim for such account on his writ. In such a case, if the defendant does not appear an order for the account claimed will be made as of course; if he does appear, the order will nevertheless be made, unless the defendant shows that there is some preliminary question to be tried.

PLACE OF PROCEEDING—DISTRICT REGISTRIES.

Hitherto, except in the case of Common Law Actions commenced in the Court of Common Pleas of Lancaster, all proceedings in any of the Courts consolidated by the Judicature Act, other than the trial of actions at the assizes, have necessarily

taken place in London. The issue of the writ or filing of the bill, the filing or delivery of pleadings and affidavits, interlocutory applications, entries of judgments, taxation of costs ; all could take place only in London. Yet in many cases, especially where all parties to an action and their respective solicitors reside in or near a provincial town, it might be of advantage to them and promote economy that all steps in the cause which are either purely the act of one party—such as the delivery of pleadings—or though requiring judicial intervention are yet of such a nature that they may properly be dealt with by a local officer, should take place elsewhere than in London. This system has for some years been in force in Lancashire ; and the Judicature Act authorises its application throughout the country generally.

Power is given by the Act of 1873 to the Queen in Council to establish district registries in such places as may be thought expedient, and to appoint district registrars. The districts are to be defined by Order in Council. Any plaintiff may, except in a Probate suit, issue his writ, and so commence his action, wherever he pleases, in London or in any registry. Any defendant served with a writ issued in a district registry must appear in the registry, if he resides or carries on business within the district. If he resides out of the district he may appear either there or in London as he pleases. If all parties appear in the district the action will in ordinary course proceed there. If any party appears in London it will proceed in London.

As long as the case is in the registry the registrar is to have the same jurisdiction as a Master of the Queen's Bench, Common Pleas, or Exchequer. Judgment by default whether final or interlocutory may be entered in the registry. Where no default is made proceedings will go on in the registry at any rate down to notice of trial. Judgment may be entered in the registry, and whenever judgment is entered there, costs may be taxed there also. It will be in the option however of any defendant within certain defined periods, regulated according to the nature of the action, to remove any action from a district registry to London. And a judge or the registrar may remove the proceedings to London at any time and at the instance of any party. And similarly a judge may remove an action from London to a district registry.

Only experience can determine what the effect of these provisions will be. But it seems likely that, except when the nature of the case renders it in the judgment of the parties undesirable, an action will proceed in a district registry, whenever all parties and their solicitors reside within a convenient distance of the registry; but that when that is not the case, so that agents would have to be employed, the action will be removed to London. Even, however, when the action is proceeding in London, accounts and inquiries may be ordered to be made or taken in a district registry.

PLEADING.

A uniform system of pleading will, for the future, take the place of the very various methods hitherto in use in the several Courts.

The history of Common Law pleading is a subject which need not be inquired into here. But a brief consideration of Common Law pleading as it exists in practice in the present day, may make the extent of the change, now effected, the clearer. The fact is, though Common Law pleading is often spoken of as if it were one homogeneous system, there are really several quite dissimilar methods of pleading in use side by side in the Common Law Courts.

One kind of pleading consists in the use of common counts on the one side, and general issues on the other. In a celebrated case tried in Ireland some years ago, the only question for the jury was whether a gentleman and lady were man and wife. If the same case had arisen in England a year ago, the declaration would have stated simply that the plaintiff claimed the price of goods sold and delivered; and the plaintiff would have further delivered particulars of the goods for which he claimed to be paid. The plea would have stated simply that the defendant was never indebted. No information, whatever, would have been given by the pleadings as to what the real controversy was. Again, the plaintiff sues the defendant for "money received by the defendant to the use of the plaintiff." That may cover any of the following cases: The defendant is the plaintiff's collector, and has received money for him as such: The plaintiff claims to be entitled to an office which the defendant also

claims, and under colour of which the defendant has received fees : The plaintiff, a customer, has paid the defendant, a tradesman, the price of goods to be furnished, and the defendant has neglected to furnish them : The plaintiff has paid a sum of money to the defendant by mistake, having taken him for another person of the same name. To take one more example, an action is brought against a railway company for injuries sustained in an accident said to have been caused by negligence. The company pleads not guilty. That may mean any of the following defences :—The plaintiff is a mere impostor trying to extort money by feigning injuries which he has not really sustained : The accident was an inevitable accident and happened without negligence : The negligence which caused the accident was on the part of the servants of another company, and the defendants are not answerable for it : The plaintiff would not have been hurt if he had not, himself, been guilty of negligence. Such pleading as this, made up of common counts or general issues, is obviously equivalent to no pleading at all. Under the new system the parties may, if they like, dispense with pleadings altogether. But there will be no room for pleading of this kind.

A second method is that in which the pleading does show with reasonable precision the point which the party pleading intends to raise ; but states not the facts which he means to prove, but the conclusion of law he seeks to draw from them. A pleading framed on this principle informs the other side that the party pleading means to prove some set of facts which will sustain a given legal conclusion, the legal conclusion itself being accurately stated. A single example will suffice. In an action upon a contract, the defendant pleads that the contract was rescinded. This may mean that the parties met, and in express terms agreed to put an end to the contract : It may mean that such an intention is to be collected from a long correspondence, and a whole series of transactions : It may mean that the plaintiff himself has broken the contract in such a way as to amount to actual repudiation. Moreover, there are generally in such cases several alternative legal conclusions possibly to be drawn from the facts, any one of which would serve the defendant's turn ; and therefore several pleas are pleaded, the evidence in support of which will be identical. For this kind of pleading, too, there will be no room

in future. Pleadings must be statements of facts, not of legal conclusions.

But a third method of pleading has been largely and increasingly in use among common lawyers, pleading specially, as it is sometimes called—that is to say, pleading the facts, leaving the Court to draw the proper legal conclusions from them. If the action is founded upon the provisions of a deed, it has been common to set out in the declaration the material parts of the deed, and then to state the facts relied upon as constituting a breach of its terms. If the action be upon a policy of insurance, it has been usual to set out the terms of the policy, and then state the loss which has occurred under it. If the defence has been unseaworthiness the fact of unseaworthiness, has been stated as a fact, though it is true the details of the unseaworthiness have been left to be supplied by particulars supplementary to the plea. There seems to be no reason why pleading in future should differ very materially from such pleading as this, except in a few particulars, that is to say :—As claims and defences will not be divided into counts and pleas there will be no danger of having to tell the same story twice : Pleadings will be in the convenient form of numbered paragraphs : What has hitherto been supplied in the form of particulars will, it would seem, commonly be properly embodied in the pleadings : And facts will probably be generally given rather more in detail than hitherto.

Pleadings in Chancery have been narratives of fact, as distinguished from statements of legal conclusions. But Chancery pleadings have been intolerably prolix. In the case of answers there has been one almost sufficient reason for this. The answer has ordinarily been not merely a pleading, but also the reply to interrogatories put for the purpose of discovery. But prolixity has been scarcely less the vice of bills than of answers. This has probably partly arisen from the real or supposed convenience to a judge of having documentary evidence set out on the face of the pleadings. But probably it has arisen at least as much from the simple fact that it is much easier to set out everything, every document and every fact that may possibly have to be referred to, than to devote the necessary time and thought to the consideration of what ought to be set out and what ought not. Whatever the reason be, while many bills in Chancery have been

admirable examples of good pleading, a very large proportion have been as execrable specimens of slovenly pleading as it is possible to conceive.

It has often been sought to express the true rule of sound pleading by saying that you should plead facts and not evidence ; and the new rules of pleading adopt the expression. But it is evident that any such rule is, and must be, vague and indefinite. The matter must be one of degree. It is clear however that Common Law pleading has hitherto erred grossly in one direction, and Chancery pleading equally grossly in the other. In the Admiralty, and Probate and Divorce Courts the happy medium seems to have been on the whole very fairly observed.

The new body of rules, in addition to the general prohibition against pleading evidence, contain many rules directed to check prolixity and bring the parties to a point. Probably the most important of these are those which establish that each party shall be taken to admit what he does not deny, and which prohibit mere general denials in the first instance, until each party has first dealt with the subject matter in detail.

DISCOVERY.

There have been grave defects in the practice both of the Common Law Courts and of the Court of Chancery with reference to discovery.

Discovery in an action may be wanted for a variety of purposes. A claimant may, on many grounds, be entitled to discovery, and he may want it for the very purpose of ascertaining what his real cause of action, if any, is. Or he may want it to elicit such detailed information as may enable him to set out his case with proper accuracy. Or he may want it in order to ascertain facts which will support his case as stated, or to put him on the proper track for ascertaining them. Or he may want it merely to obtain admissions of facts with a view to saving the trouble and expense of formal proof.

These, and probably many others, are proper objects of discovery. But to ascertain where the parties are at issue, in what points the case relied upon on the one side is inconsistent with that of the other, is not the proper function of discovery. That is the function of pleadings. Now it is very obvious that the step at

which it is desirable to seek discovery, and the extent of ground which it ought to cover, must in each case depend upon the purpose for which the discovery is wanted. In many cases it is properly sought at the earliest possible stage ; in others it is not found necessary till the evidence is actually preparing for the trial. In some cases discovery may properly take the widest possible range ; in others, it may with equal propriety, be limited to a single point. But in Chancery the plaintiff's interrogatories, if he put interrogatories, have been an echo of the bill. He has questioned the defendant upon oath as to every detail of the case stated from first to last ; whereas, when the defendant comes to plead, to state his version of the story, it may probably be found that the matters about which there is any dispute, are contained in two or three paragraphs. The result therefore often is that a great deal of expense has been incurred to procure a number of answers, which are of no use to the one side, and have given a great deal of trouble to the other.

In the Common Law Courts the right to discovery has been fettered by the most inconvenient restrictions. It has been necessary for the applicant to come furnished with affidavits, which in the most honest cases it is often the most difficult to procure. And, in the case of interrogatories, judges have been called upon to determine at chambers, with but a scanty knowledge of the case, what particular questions shall be put, and what shall not.

For the future, pleading and discovery will, as has been pointed out, be separate things, each applied to its proper purpose. Each party may administer interrogatories, within certain periods as of right, and at any time by leave of a judge. A question may be struck out if improperly put ; or objection may be taken to it by the affidavit in answer. And any question as to the answer will be dealt with summarily. But it will be in the power of the judge, and in the absence of an order of the judge it will be the duty of the taxing officer, to inquire whether interrogatories were properly put or not, and deal with the costs accordingly.

Discovery of documents may likewise be obtained as of course, without any affidavit. And production may be ordered by a judge.

INJUNCTIONS AND OTHER PROTECTIVE ORDERS.

The valuable power long exercised by the Court of Chancery of granting an interlocutory injunction, to restrain an alleged wrong pending the decision of the Court as to the rights of the parties, is conferred upon every branch of the Court. And the power will be wider than that of the Court of Chancery. For the restrictions which that Court placed upon its own power with respect to restraining mere trespasses, and the distinctions it drew between cases, according as the one party or the other was in possession, are expressly done away with by the Judicature Act.

When by any contract a *primâ facie* case of liability is made out, an order may be made for the custody or preservation of the subject matter, or the payment of the amount in dispute into Court. And in any action an order may be made for the protection of the subject matter, or its inspection, or the taking of samples, or making experiments.

Perishable goods may be ordered to be sold.

When goods are claimed and the defence is a lien, the goods may be ordered to be given up on payment into Court, to abide the event, of the amount of the alleged lien with interest and costs.

TRIAL.

The existing state of things with regard to the modes of trying actions in various Courts is described by the Commissioners as follows :—

“With regard to the trial and determination of disputed questions of fact, the mode of trial varies according to the Court in which the litigation happens to be pending, without any sufficient power of adaptation to the requirements of particular cases.

“In the Court of Chancery, until recently, the Judge had no power to summon a jury, whatever might be the conflict of evidence or dispute as to the facts; all questions of fact as well as of law were generally decided by the Judge. In some cases it was the practice to send issues to be tried by a jury at common law. This course, however, was taken,

not as a mode of trial, but merely for the assistance or information of the Court, which still reserved to itself the ultimate decision of the facts, and if dissatisfied with the first verdict might send the case before a second jury, or decide the facts according to its own view, and without regard to the verdict. Substantially the practice of the Court of Chancery remains unaltered; but there is now a power, which is rarely exercised, of summoning a jury, and the practice of sending issues to be tried at Common Law has become less frequent.

“The Court of Admiralty, which decides for itself all questions of law and fact, may in special cases call in the assistance of nautical or mercantile assessors, but it has no power to summon a jury. The Court, however, by a recent statute has power to direct any question of fact arising in a suit to be tried in a Court of Common Law, and, if it thinks fit, to order a new trial; but the verdict of the jury, when final, is conclusive upon the Court. This power, we understand, has been exercised in only one instance.

“In the Courts of Probate and Divorce application is made to the Judge in each case to fix the mode of trial, either before himself or by a jury. In the Probate Court, if the parties agree in asking for a jury, the application is usually granted; if they do not agree, the Judge fixes the mode of trial which he considers best adapted to the case; but in the case of an heir-at-law cited, or otherwise made party to the suit, a jury may be demanded as of right. A similar rule of practice exists in the Court of Divorce. In that court also, in cases of dissolution of marriage, either party may demand a jury as of right.

“In the Courts of Common Law a jury has always been regarded as the constitutional tribunal for trying issues of fact; and the theory is, that all such questions are fit to be tried in that way. It has, however, long been apparent, in the practice of the Courts of Common Law, that there are several classes of cases litigated in those courts to which trial by jury is not adapted, and in which the parties are compelled—in many cases after they have incurred all the expense of a trial—to resort to private arbitration. Until the Common Law Procedure Act of 1854, the parties could not be compelled to go to arbitration, and the power given by that Act is limited to cases where the

dispute relates wholly or in part to matters of mere account, or where the parties have themselves before action agreed in writing to refer the matter in difference to arbitration.

“The system of arbitration which has thus been introduced, is attended with much inconvenience. The practice is to refer cases which cannot be conveniently tried in court either to a barrister or to an expert. A barrister can seldom give that continuous attention to the case which is essential to its being speedily and satisfactorily disposed of; and an expert, being unacquainted with the law of evidence, and with the rules which govern legal proceedings, allows questions to be introduced which have nothing to do with the matters at issue. In neither case has the referee that authority over the practitioners and the witnesses which is essential to the proper conduct of the proceedings. If the barrister or solicitor who is engaged in the suit, or even a witness, has some other engagement, an adjournment is almost of course. The arbitrator makes his own charges, generally depending on the number and length of the meetings, and the professional fees are regulated accordingly. The result is great and unnecessary delay, and a vast increase of expense to the suitors. The arbitrator thus appointed is the sole judge of law and fact, and there is no appeal from his judgment, however erroneous his view of the law may be, unless perhaps when the error appears on the face of his award. Nor is there any remedy, whatever may be the miscarriage of the arbitrator, unless he fails to decide on all the matters referred to him, or exceeds his jurisdiction, or is guilty of some misconduct in the course of the case.

“In the Court of Chancery questions involving complicated inquiries, particularly in matters of account, are always made the subject of reference to a Judge at Chambers. These references are practically conducted before the chief clerk, but any party is entitled, if he think fit, to require that any question arising in the course of the proceedings shall be submitted to the judge himself for decision. In such a case the decision of the judge is given after he has been sitting in Court all day hearing causes. It has been represented to us that this system does not give satisfaction, and that there is not sufficient judicial power to dispose of the business in Court, and at the same time to give that per-

sonal attention to the business in Chambers which was contemplated when references to the Judge in Chambers were substituted for the old references to the Masters in Chancery.

“In the Court of Admiralty references are always to the Registrar, assisted if necessary by one or two merchants or other skilled persons as assessors or advisers; the Registrar, from his knowledge of law, is enabled to regulate the conduct of the case; the merchants—assuming them to be properly chosen—have that practical knowledge which enables them to advise him on questions of a commercial nature that may arise in the course of the proceedings. The reference proceeds like a trial at law until it is concluded, without adjournment, except for special cause, and there is an appeal at once to the judge in case the Registrar miscarries.”

And the report adds:—

“It seems to us that it is the duty of the country to provide tribunals adapted to the trial of all classes of cases, and capable of adjusting the rights of litigant parties in the manner most suitable to the nature of the questions to be tried.”

The Judicature Act and the rules of procedure accordingly provide several modes of trial, any of which may hereafter be used in any division of the Court.

Actions may be tried by a judge or judges, by a judge with assessors, by a judge and jury, or by an official or special referee with or without assessors.

The plaintiff may give notice of trial and choose the mode of trial. If he fails to do so within a limited time, the defendant has the same right. But in either case the opposite party may in general require the issues of fact to be submitted to a jury.

A judge may order different questions in an action to be tried in different ways, and in whatever order may be most advantageous. And unless a jury-trial has been required by either party, a judge may direct a trial by a different mode from that of which notice has been given. Issues may be sent for trial to the assizes or the London or Middlesex sittings. Inquiries and accounts may be ordered to be made and taken at any stage. A judge may obtain a report upon a question from an official or special referee. And, by consent, or where a prolonged examination of documents or accounts, or scientific or local investigation is required, he may without consent, refer any question to a referee, official or special.

The plaintiff has the right to choose the place of trial by notice in his statement of claim ; but the place of trial may be changed by order of a judge. Local venues are abolished.

REFERENCES.

The Judicature Act, 1873, provides for the appointment of a new class of officers in connection with the Court :—Official Referees. And, as has been already pointed out under the head of trial, the power of compulsory reference has been carried considerably further than it has ever been before. But at the same time a very important change is made in the position of an arbitrator, to whom an action or any question in an action is referred. Hitherto he has been sole and final judge both of law and fact, and no appeal has lain from his decision. Under the new system his finding upon matters of fact will be equivalent to the verdict of a jury, and open to review upon the same grounds. His decision upon matters of law will be subject to appeal like that of a judge.

EVIDENCE.

In the Court of Chancery the evidence upon which the Judge has decided the cause has ordinarily been the affidavits of witnesses. If they have been cross-examined it has sometimes been before the judge at the hearing, but more commonly before an examiner.

In the Common Law Courts evidence has been given orally and in open Court at the trial.

The latter practice will for the future universally prevail, subject to certain qualifications.

A judge may order the deposition of a witness to be taken before an officer or other person, and used at the trial. The Common Law Courts have long possessed this power.

A judge may order that particular facts be proved by affidavits or that the affidavit of a particular witness be used; unless the opposite party *bonâ fide* desires to cross-examine the witness.

The parties may in any action agree to take the evidence by affidavit. But if this be done the cross-examination of the witnesses, if any, will be in open Court at the trial.

Upon motions, petitions, and summonses, affidavits may be

used. But any person making an affidavit may be ordered to attend and be cross-examined.

JUDGMENT.

Nothing has given rise to greater difficulties in the way of the efficient administration of justice by the Courts of Common Law, than their want of power freely to mould the judgment of the Court to fit the circumstances of each case. A Common Law Court could give but one judgment, for or against the plaintiff or several plaintiffs, against or for the defendant or several defendants. If in favour of several, it must establish a joint right to everything awarded. If against several, it could only be upon the ground of a joint liability in respect of every claim enforced. Subject to a few recent exceptions, the whole relief awarded to or against any person must be so awarded to or against him in the same right and capacity. The only form of judgment that could be given was for a sum of money, or the recovery of land, or goods. And no judgment could award relief subject to any condition or qualification whatever, however clearly the justice of the case might require it.

The Judicature Act removes the obstacles with which the Common Law Courts have hitherto had to contend. By its express provisions "the High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act, in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to, in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided." And the rules as to the joinder of parties, and the joinder of claims are adapted to give effect to this liberal provision.

But on the other hand the new procedure by no means

compels people to enlarge the bounds of their controversies or introduce a multiplicity of parties. It is open to any plaintiff still, as heretofore in a Common Law Court, to claim whatever he is entitled to from the particular person he makes defendant, without the delay involved in a wider inquiry. And the rules in terms provide that:—"No action shall be defeated by reason of the misjoinder of parties, and the Court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it."

JUDGMENT AT THE TRIAL.

In Chancery and in the Admiralty and Probate Courts the judge after the facts have been ascertained, whether by the judge himself or by a jury, has applied the law to the facts found, and given whatever judgment the parties were entitled to.

In the Common Law Courts the judge at the sittings in London or Middlesex, or the judge or a commissioner at the assizes has been in an entirely different position. He was a mere commissioner to try the issues of fact joined between the parties, and to direct a verdict for the one party or the other accordingly. Upon that verdict judgment ordinarily followed as a matter of course; and in the great majority of cases rightly followed. But it might well happen that though on the facts pleaded and proved the plaintiff was entitled to the verdict, yet he had in point of law no claim against the defendant; or on the other hand the defendant might on the pleadings and evidence be entitled to the verdict, yet his defence might be invalid in law. The judge at the trial had no power to deal with such questions. They might be raised by demurrer, or by motion for judgment non obstante veredicto, or brought before the Court in banc in indirect ways; but not before the judge at the trial.

The Judicature Act expressly provides that the judge or commissioner on circuit, and the judge at the London and Middlesex sittings shall constitute a court. He has therefore all the powers of a court to deal with the case before him. And he will have power, where the facts are found, to apply the law to them and direct the proper judgment. The importance, too, of this change is much enhanced by the large power which, as

already pointed out, every branch of the Court will have to mould its judgment so as to do complete justice between all parties.

Three courses are left open to the judge at the trial :—

First, after the facts are found, he may simply direct the proper judgment to be entered ;

Secondly, he may direct judgment to be entered, with leave to any party to move to set it aside ;

Thirdly, he may abstain from directing any judgment to be entered, and leave any party, who thinks himself entitled to it, to move for judgment accordingly.

JUDGMENT ON MOTION FOR JUDGMENT.

Judgment may in various cases be had by default ; and, as has been pointed out, the judge at or after the trial of the action may give judgment.

But the judge may, as has been explained, abstain from giving any judgment, and leave the matter wholly at large. Or he may reserve leave to move to set aside the judgment entered. Or, again, there may have been no one trial of the action ; but various questions or issues may have been ordered to be tried in different ways. In all these cases the judgment of the Court will be obtained by motion for judgment. And in all these cases, too, the motion will be on notice simply, without any rule to show cause.

Again, at a trial by jury the judge, having taken the opinion of the jury upon the questions left to them, may have caused the finding upon some issue in the action to be wrongfully entered, having regard to the answers of the jury ; and hence may have directed a wrong judgment. Or the finding upon all the issues may have been rightly entered, but he may have misapplied the law to them, and so arrived at a wrong judgment. In either of these cases the party aggrieved may, without any leave reserved, move to set aside the judgment and enter the right one. But, if without leave reserved, the motion must be for a rule to show cause.

NEW TRIAL.

With respect to new trials, some important changes of practice are introduced.

In the first place, misdirection, or the improper admission, or rejection of evidence will be no ground for a new trial, unless in the opinion of the Court some substantial wrong or miscarriage has been occasioned thereby. And, secondly, a new trial may be granted of any one question in an action without disturbing the decision of the others.

Motions for new trials in the Queen's Bench, Common Pleas and Exchequer Divisions must, as hitherto, be for rules to show cause, and must be made to Divisional Courts.

EXECUTION.

There has hitherto been some diversity between the several Courts now consolidated with respect to their modes of enforcing judgments. Certain processes have been available in some Courts which have not been so in others. Thus the Court of Chancery has used the process of Sequestration, which the Common Law Courts have not. The Common Law Courts have had power to attach debts due to a judgment debtor in satisfaction of the judgment; the Court of Chancery has not.

Under the new system all the existing processes and methods of execution will be available in all branches of the Court. And in the main the practice as to each kind of execution remains as it has been; the changes are for the most part of a kind which need not be mentioned here.

Two points, however, are too important to remain unnoticed.

Hitherto when judgment followed upon the verdict of a jury, the successful party was not entitled to issue execution until fourteen days after the trial, unless the judge gave him leave to issue it earlier. Under the new system there is no provision for any such interval.

And, again, by the rules now coming into force, any order of any Court or judge may be enforced in the same way in which a judgment to the same effect might be enforced.

APPEALS.

It has already been pointed out that, under the new system, an appeal will lie from every judgment and order of the High Court, except where the judgment or order has been by consent,

or relates only to costs when costs are discretionary, and except in a few other cases, which need not be further specified here.

The methods of reaching the Court of Appeal hitherto in use in the Common Law Courts, by proceedings in error, and by appeal upon a case stated for the purpose, are abolished. And one uniform method of appeal is provided for all cases, namely by motion, after notice to the parties affected by the appeal. But, though in a somewhat altered form, in substance the right to proceed by bill of exceptions is preserved.

When an appeal is brought, the Court of Appeal will have complete control over the action or matter. It will have all the powers of the Court of first instance, and can give whatever judgment that Court ought to have given. No cross appeals need ever be brought. But the respondent who means to take any exception to the judgment under appeal will give notice to that effect to the appellant. Even the omission of such a notice will not limit the powers of the Court of Appeal, though it may be ground for adjourning the argument.

Appeals from interlocutory orders must be brought within twenty-one days, and must be heard before not less than two judges. Appeals from final judgments must be brought within a year, and must be heard before not less than three judges. A single judge may give interlocutory directions relating to the appeal.

MOTIONS.

The ordinary practice in the Common Law Courts with regard to motions has been to move, in the first place, for a rule to show cause. Then, either after the rule became returnable, cause was shown, and the matter disposed of; or, as in the case of new trial and other-like motions, the case went into the paper, and came on in its order.

For the future there will, as a general rule, be no rules to show cause; but notice will be given to the parties affected, and the merits of the motion will be dealt with in the first instance. This will not, however, affect the cases in which the practice has been to grant rules absolute in the first instance. And in two instances, the rule to show cause is still retained; that is to say, in the case of a motion for a new trial and in the case of a

motion, without leave reserved, to set aside a judgment directed by a judge at the trial, on the ground that he has misapplied the law to the facts as found.

PROCEEDINGS IN CHAMBERS.

The practice at Chambers is not materially altered in any of the divisions from that hitherto in force, except that the list of matters excluded from the jurisdiction of the Masters of the Queen's Bench, Common Pleas, and Exchequer Divisions is not identical in all respects with the former list.

PRINTING PROCEEDINGS.

Printing has not been in general use in the Common Law Courts. In Chancery it has been in universal use for certain proceedings for many years.

Even in Chancery, however, the practice as to printing has been different with regard to different documents. Bills have been printed by the Plaintiff, and then filed. Answers have been filed in manuscript, and then printed by the parties filing them. Affidavits and depositions have been filed in manuscript, and then printed by the officers of the Court.

Under the new system all pleadings, other than petitions and summonses, unless under three folios in length, will be printed. So will special cases. Answers to interrogatories, and depositions will be printed, unless otherwise ordered. When the parties consent to try the action on affidavit, the affidavits will be printed.

And a uniform system of printing is adopted. It will be done entirely by the parties. The cost, not exceeding a fixed sum, will be allowed on taxation. And copies must be furnished at a fixed rate.

COSTS.

In the Common Law Courts, subject to the provisions of the County Court Acts and other Acts depriving a plaintiff of costs in certain cases, the statutory rule has been that costs followed the event.

In the Court of Chancery, various classes of persons have in certain cases been entitled to their costs out of the estate or fund the

subject of the suit ; and this right is expressly preserved to them. In other cases the costs have been in the discretion of the Court ; though the practice has been that the party failing was ordered to pay costs unless there were special circumstances affording a reason why he should not.

In Admiralty also, costs have been in the control of the Court ; though in that Court also they have ordinarily been allowed to follow the event unless there were special reasons to the contrary.

The Court of Probate has had a like control over costs.

Under the new system, costs are in general to be in the discretion of the Court in all divisions. But it is expressly provided that in the Queen's Bench, Common Pleas, and Exchequer divisions, upon a trial by jury, costs are to follow the event as heretofore unless the contrary be ordered upon special application, and for good cause shown.

Each of the Courts has had its own scale of costs applicable to the particular kinds of proceedings which could be taken in the Court. Under the Judicature Act it became necessary to frame a system of costs dependant upon the nature of the proceeding, not upon the division in which it is taken. The method adopted is as follows. Two scales of costs are provided ; a higher and a lower. The higher scale is applicable to the more complicated classes of cases assigned by the 34th section of the Judicature Act to the Chancery division, provided the value of the subject matter is £1000 or over it ; this being in accordance with the existing practice in Chancery. This higher scale is also applicable to cases in which an injunction is claimed and the injunction is the principal relief sought. In other cases the lower scale will apply. The Court or a judge may however in any case specially order that either scale shall apply either in whole or in part.

As to the sums to be allowed in respect of particular matters a wide discretion is given both to the taxing officers and to the Court, either by original order or upon appeal from the officer. On the one hand, in respect of various proceedings the taxing officer is empowered to make a special allowance for extra labour where the ordinary fee is an insufficient remuneration. On the other hand the Court or a judge, or in the absence of an order by either, the taxing officer has power to disallow the costs of

pleadings, affidavits, or other documents needlessly lengthy, proceedings improperly or unnecessarily taken, and in many other like cases.

In all cases the allowance or disallowance by the taxing officer is to be subject to an appeal to a judge. And a uniform practice in obtaining a review of taxation is provided for all the divisions.

CONCLUSION.

No attempt has been made in this introduction to give anything like a complete account of the effect of the Judicature Acts or of the Procedure established under them. Nor has any attempt been made to state all or nearly all the matters in which the new practice differs from the systems hitherto in force. All that has been sought is to exhibit, in the merest outline, a few features, but those the most important, of the jurisdiction and procedure of the Courts for the future ; and to show how they differ from those with which we have been familiar.

SUPREME COURT OF JUDICATURE ACT, 1873.

36 & 37 VICT. c. 66.

—o—

An Act for the constitution of a Supreme Court, and for other purposes relating to the better Administration of Justice in England; and to authorise the transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of Her Majesty's Privy Council.

A. D. 1873.
S. i.

[5th August 1873.]

WHEREAS it is expedient to constitute a Supreme Court, and to make provision for the better administration of justice in England :

And whereas it is also expedient to alter and amend the law relating to the Judicial Committee of Her Majesty's Privy Council :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PRELIMINARY.

1. This Act may be cited for all purposes as the "Supreme Court of Judicature Act, 1873."

Short title.

2. This Act, except any provision thereof which is declared to take effect on the passing of this Act, shall commence and come into operation on the second day of November, 1874.

Commence-
ment of Act.

By 37 & 38 Vict., c. 83, *post*, p. 125, the period for the Act's coming into operation was postponed to the 1st November, 1875. By s. 2 of the Act of 1875, *post*, p. 125, the operation of ss. 20, 21, and 55, *post*, p. 54, 55, 85, by which appeals to the House of Lords would be abolished, and second appeals from the High Court done away with, is postponed to the 1st November, 1876.

Ss. 27, 60, 61, and 68 came into operation on the passing of the Act. But the last of them is now superseded by s. 17 of the Act of 1875.

S. iii.

PART I.

CONSTITUTION AND JUDGES OF SUPREME COURT.

Union of
existing
Courts into
one Supreme
Court.

3. From and after the time appointed for the commencement of this Act, the several Courts hereinafter mentioned (that is to say), The High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, and the *London Court of Bankruptcy* shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in England.

Although the Divorce Court is consolidated with the Supreme Court, and its jurisdiction transferred to the High Court (sec. 16, *post*, p. 51), divorce and matrimonial causes are expressly exempted from the operation of the Rules of Procedure (Order I., Rule 1; Order LXII., *post*, pp. 151, 312); and the practice in all such causes will remain unaltered.

By ss. 9 and 33 of the Act of 1875, so much of this section as relates to the Bankruptcy Court is repealed. The court is left a separate court, and it is provided that the office of Chief Judge in Bankruptcy shall be filled by a Judge of the High Court.

Division of
Supreme
Court into
Court of
original and
a Court
of appellate
jurisdiction.

4. The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is hereinafter mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as hereinafter mentioned as may be incident to the determination of any appeal.

As to the appellate jurisdiction of the High Court, see ss. 45 and 47, *post*, p. 81, 83, and s. 15 of the Act of 1875, *post*, p. 135.

As to the jurisdiction of the Court of Appeal, see s. 19, *post*, p. 54 and note thereto, and Order LVIII., *post*, p. 301.

Constitution
of High
Court of
Justice.

5. Her Majesty's High Court of Justice shall be constituted as follows:—The first Judges thereof shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the several Vice-Chancellors of the High Court of Chancery, the Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, the several Puisne Justices of the Courts of Queen's Bench and Common Pleas respectively,

S. v.

the several Junior Barons of the Court of Exchequer, and the Judge of the High Court of Admiralty, except such, if any, of the aforesaid Judges as shall be appointed ordinary Judges of the Court of Appeal.

Subject to the provisions hereinafter contained, whenever the office of a Judge of the said High Court shall become vacant, a new Judge may be appointed thereto by Her Majesty, by Letters Patent. All persons to be hereafter appointed to fill the places of the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively, as heretofore. Every Judge who shall be appointed to fill the place of any other Judge of the said High Court of Justice shall be styled in his appointment "Judge of Her Majesty's High Court of Justice," and shall be appointed in the same manner in which the Puisne Justices and Junior Barons of the Superior Courts of Common Law have been heretofore appointed: *Provided always that if at the commencement of this Act the number of Puisne Justices and Junior Barons who shall become Judges of the said High Court shall exceed twelve in the whole, no new Judge of the said High Court shall be appointed in the place of any such Puisne Justice or Junior Baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of Judges of the said High Court shall not exceed twenty-one.*

All the Judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law.

The Lord Chief Justice of England for the time being shall be President of the said High Court of Justice in the absence of the Lord Chancellor.

By the Act of 1875, sec. 3, *post*, p. 127, the proviso printed in italics is repealed.

By s. 32, *post*, p. 72, the distinctive office of either of the Chief Justices, the Chief Baron, or the Master of the Rolls may be abolished upon a vacancy occurring.

6. *Her Majesty's Court of Appeal shall be constituted as follows:—There shall be five ex-officio Judges thereof and also so many ordinary Judges (not exceeding nine at any*

Constitution
of Court of
Appeal.

S. vi.

one time) as Her Majesty shall from time to time appoint. The *ex-officio* Judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer. The first ordinary Judges of the said Court shall be the existing Lords Justices of Appeal in Chancery, the existing salaried Judges of the Judicial Committee of Her Majesty's Privy Council, appointed under the "Judicial Committee Act, 1871," and such three other persons as Her Majesty may be pleased to appoint by Letters Patent; such appointment may be made either within one month before or at any time after the day appointed for the commencement of this Act, but if made before shall take effect at the commencement of this Act.

Besides the said *ex-officio* Judges and ordinary Judges, it shall be lawful for Her Majesty (if she shall think fit), from time to time to appoint, under Her Royal Sign Manual, as additional Judges of the Court of Appeal, any persons who, having held in England the office of a Judge of the Superior Courts of Westminster hereby united and consolidated, or of Her Majesty's Supreme Court hereby constituted, or in Scotland the office of Lord Justice General or Lord Justice Clerk, or in Ireland the office of Lord Chancellor or Lord Justice of Appeal, or in India the office of Chief Justice of the High Court of Judicature at Fort William in Bengal, or Madras, or Bombay, shall respectively signify in writing their willingness to serve as such additional Judges in the Court of Appeal. No such additional Judge shall be deemed to have undertaken the duty of sitting in the Court of Appeal when prevented from so doing by attendance in the House of Lords, or on the discharge of any other public duty, or by any other reasonable impediment.

The ordinary and additional Judges of the Court of Appeal shall be styled Lords Justices of Appeal. All the Judges of the said Court shall have, in all respects, save as in this Act is otherwise expressly mentioned, equal power, authority, and jurisdiction.

Whenever the office of an ordinary Judge of the Court of Appeal becomes vacant, a new Judge may be appointed thereto by Her Majesty by Letters Patent.

The Lord Chancellor for the time being shall be President of the Court of Appeal.

And the constitution of the Court of Appeal is governed by the following provision :— S. vii.

S. 4. " Her Majesty's Court of Appeal in this Act and in the principal Act referred to as the Court of Appeal shall be constituted as follows: There shall be five ex-officio Judges thereof, and also so many ordinary Judges, not exceeding three at any one time, as Her Majesty shall from time to time appoint. Constitution of Court of Appeal.

The ex-officio Judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer.

The first ordinary Judges of the said court shall be the present Lords Justices of Appeal in Chancery, and such one other person as Her Majesty may be pleased to appoint by Letters Patent. Such appointment may be made either before or after the commencement of this Act, but if made before shall take effect at the commencement of the Act.

The ordinary Judges of the Court of Appeal shall be styled Justices of Appeal.

The Lord Chancellor may by writing addressed to the President of any one or more of the following divisions of the High Court of Justice, that is to say, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Division, request the attendance at any time, except during the times of the spring or summer circuits, of an additional Judge from such division or divisions (not being an ex-officio Judge or Judges of the Court of Appeal) at the sittings of the Court of Appeal; and a judge, to be selected by the division from which his attendance is requested, shall attend accordingly.

Every additional Judge, during the time that he attends the sitting of Her Majesty's Court of Appeal, shall have all the jurisdiction and powers of a Judge of the said Court of Appeal, but he shall not otherwise be deemed to be a judge of the said Court, or to have ceased to be a judge of the division of the High Court of Justice to which he belongs.

Section fifty-four of the principal Act is hereby repealed, and instead thereof the following enactment shall take effect: No Judge of the said Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made by himself, or made by any Divisional Court of the High Court of which he was and is a member.

Whenever the office of an ordinary Judge of the Court of Appeal becomes vacant a new Judge may be appointed thereto by Her Majesty by Letters Patent."

7. The office of any Judge of the said High Court of Justice, or of the said Court of Appeal, may be vacated by resignation in writing, under his hand, addressed to the Lord Chancellor, without any deed of surrender; and the office of any Judge of the said High Court shall be vacated by his being appointed a Judge of the said Court of Appeal. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge of either of such Courts. Vacancies by resignation of Judges and effect of vacancies generally.

S. viii.
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Qualifica-
tions of
Judges not
required to
be Serjeants-
at-law.

8. Any barrister of not less than ten years' standing shall be qualified to be appointed a Judge of the said High Court of Justice; and any person who if this Act had not passed would have been qualified by law to be appointed a Lord Justice of the Court of Appeal in Chancery, or has been a Judge of the High Court of Justice of not less than one year's standing, shall be qualified to be appointed an ordinary Judge of the said Court of Appeal: Provided, that no person appointed a Judge of either of the said Courts shall henceforth be required to take, or to have taken, the degree of Serjeant-at-Law.

By 14 & 15 Vict., c. 83, s. 1, any person may be appointed a Lord Justice who is or has been a barrister of fifteen years' standing.

Tenure of
office of
Judges, and
oaths of
office.
Judges not
to sit in the
House of
Commons.

9. *All the Judges of the High Court of Justice, and of the Court of Appeal respectively, shall hold their offices for life, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every Judge of either of the said Courts (other than the Lord Chancellor) when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the Oath of Allegiance, and Judicial Oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.*

This section is repealed by the Act of 1875, *post*, p. 138, and the following provisions substituted for it:—

Tenure of
office of
Judges, and
oaths of
office.
Judges not
to sit in the
House of
Commons.

S. 5. "All the Judges of the High Court of Justice, and of the Court of Appeal respectively, with the exception of the Lord Chancellor, shall hold their offices as such Judges respectively during good behaviour, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every person appointed after the passing of this Act to be Judge of either of the said Courts (other than the Lord Chancellor), when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore."

Precedence
of Judges.

10. *The ex-officio Judges of the Court of Appeal shall rank in the Supreme Court in the order of their present respective official precedence. The other Judges (whether ordinary or additional) of the Court of Appeal shall rank in the Supreme Court, if Peers or Privy Councillors, in*

the order of their respective precedence: and the rest of the Judges of the Court of Appeal shall rank according to the priority of their respective appointments to be Judges thereof.

S. xi.

The Judges of the High Court of Justice, who are not also Judges of the Court of Appeal, shall rank next after the Judges of the Court of Appeal, and among themselves (subject to the provisions hereinafter contained as to existing Judges) according to the priority of their respective appointments.

This section is repealed by the Act of 1875, and the following provision is substituted:—

S. 6. "The Lord Chancellor shall be President of the Court of Appeal; the other ex-officio Judges of the Court of Appeal shall rank in the order of their present respective official precedence. The ordinary Judges of the Court of Appeal, if not entitled to precedence as Peers or Privy Councillors, shall rank according to the priority of their respective appointments as such Judges.

"The Judges of the High Court of Justice who are not also Judges of the Court of Appeal shall rank next after the Judges of the Court of Appeal, and, among themselves (subject to the provisions in the principal Act contained as to existing Judges), according to the priority of their respective appointments."

11. Every existing Judge, who is by this Act made a Judge of the High Court of Justice or an ordinary Judge of the Court of Appeal, shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed. No Judge appointed before the passing of this Act shall be required to act under any Commission of Assize, Nisi Prius, Oyer and Terminer, or Goal Delivery, unless he was so liable by usage or custom at the commencement of this Act.

Saving of rights and obligations of existing Judges.

Service as a Judge in the High Court of Justice, or in the Court of Appeal, shall, in the case of an existing Judge, for the purpose of determining the length of service entitling such Judge to a pension on his retirement, be deemed to be a continuation of his service in the Court of which he is a Judge at the time of the commencement of this Act.

S. xi.

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Admiralty
judges and
registrar.

By the Act of 1875 it is enacted as follows :

s. 8. "Whereas by section eleven of the principal Act it is provided as follows : "Every existing judge who is by this Act made a Judge of the High Court of Justice or an ordinary Judge of the Court of Appeal shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed ; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom if this Act had not passed. No judge appointed before the passing of this Act shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery, unless he was so liable by usage or custom at the commencement of this Act :"

And whereas the judge of the High Court of Admiralty is by the principal Act appointed a judge of the High Court of Justice :

And whereas such Judge is, as to salary and pension, inferior in position to the other puisne Judges of the Superior Courts of Common Law, but holds certain ecclesiastical and other offices in addition to the office of Judge of the High Court of Admiralty :

And whereas it is expedient that such judge, if he be willing to relinquish such other offices, should be placed in the same position as to rank, salary, and pension, as the other puisne judges of the superior courts of common law :

Be it enacted that—

If the existing Judge of the High Court of Admiralty under his hand signifies to the Lord Chancellor in writing, before the commencement of the principal Act, that he is willing to relinquish such other offices as aforesaid, and does before the commencement of the principal Act resign all other offices of emolument held by him except the office of Judge of the High Court of Admiralty, he shall, from and after the commencement of the principal Act, be entitled to the same rank, salary, and pension as if he had been appointed a Judge of the High Court of Justice immediately on the commencement of the principal Act, with this addition, that, in reckoning service for the purposes of his pension, his service as a Judge of the High Court of Admiralty shall be reckoned in the same manner as if the High Court of Justice had been established at the time of his accepting the office of Judge of the High Court of Admiralty, and he had continued from such time to be a Judge of the said High Court of Justice.

The present holder of the office of registrar of Her Majesty in Ecclesiastical and Admiralty causes, shall, as respects any appeals in which he would otherwise be concerned coming within the cognizance of the Court of Appeal, be deemed to be an officer attached to the Supreme Court ; and the office, so far as respects the duties in relation to such appeals as aforesaid, shall be deemed to be a separate office within the meaning of section seventy-seven of the principal Act, and may be dealt with accordingly. He shall be entitled, in so far as he sustains any loss of emoluments by or in consequence of the principal Act or this Act, to prefer a claim to the Treasury in the same manner as an officer paid out of fees whose emoluments are affected by the passing of the principal Act is entitled to do under section eighty of the principal Act.

Subject as aforesaid the person who is at the time of the passing

of this Act registrar of Her Majesty in Ecclesiastical and Admiralty causes shall, notwithstanding anything in the principal Act or this Act, have the same rank and hold his office upon the same tenure and upon the same terms and conditions as heretofore : but it shall be lawful for Her Majesty by Order in Council, made upon the recommendation of the Lord Chancellor, with the concurrence of the Treasury, to make, notwithstanding anything contained in any Act of Parliament, such arrangements with respect to the duties of the said last mentioned office, either by abolition thereof or otherwise, as to Her Majesty may seem expedient : provided that such order shall not take effect during the continuance in such office of the said person so being registrar at the time of the passing of this Act without his assent.

S. xii.

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Every Judge of the Probate, Divorce, and Admiralty Division of the said High Court of Justice appointed after the passing of this Act shall, so far as the state of business in the said division will admit, share with the judges mentioned in section thirty-seven of the principal Act the duty of holding sittings for trials by jury in London and Middlesex, and sittings under commissions of assize, oyer and terminer, and gaol delivery."

The amending section, first, places the Judge of the Admiralty Court, if he elect to accept the prescribed conditions, on the same footing with the other Judges of the High Court. Secondly, it regulates the position of the Admiralty Registrar in respect of the matters specified. Thirdly, it imposes upon any judge henceforth to be appointed to the Probate, Divorce, and Admiralty division, the duty of going circuit, and taking part in the sittings for jury trials in London and Middlesex.

12. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of justice in any Court, whose jurisdiction is transferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom upon the judges or any judge of any of such Courts, save as hereinafter mentioned, every judge of the said High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a judge liable to such duty, or possessing such authority or power, before passing of this Act. Any such duty, authority, or power, imposed or conferred by any statute, law, or custom, in any such case as aforesaid, upon the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed.

Provisions
for extraor-
dinary duties
of Judges of
the former
Courts.

S. xiii.
Salaries of
future
Judges.

13. Subject to the provisions in this Act contained with respect to existing Judges, there shall be paid the following salaries, which shall in each case include any pension granted in respect of any public office previously filled by him, to which the Judge may be entitled ;

To the Lord Chancellor, the sums hitherto payable to him ;

To the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer the same annual sums which the holders of those offices now respectively receive ;

To each of the ordinary Judges of the Court of Appeal ; and,

To each of the other Judges of the High Court of Justice, the sum of five thousand pounds a year.

No salary shall be payable to any additional Judge of the Court of Appeal appointed under this Act ; but nothing in this Act shall in any way prejudice the right of any such additional Judge to any pension to which he may be by law entitled.

This section, so far as it relates to additional Judges of the Court of Appeal is repealed by the Act of 1875.

Retiring
pensions of
future
Judges
of High
Court of
Justice, and
ordinary
Judges of
Court of
Appeal.

14. Her Majesty may, by Letters Patent, grant to any Judge of the High Court of Justice, or to any ordinary Judge of the Court of Appeal who has served for fifteen years as a Judge in such Courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his office, a pension, by way of annuity, to be continued during his life :

In the case of the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same amount of pension which at present might under the same circumstances be granted to the holder of the same office :

In the case of any ordinary Judge of the Court of Appeal or any other Judge of the High Court of Justice, the same amount of pension which at present might under the same circumstances be granted to a Puisne Justice of the Court of Queen's Bench.

Salaries and
pensions how
to be paid.

15. Subject to the provisions in this Act contained with respect to existing Judges, the salaries, allowances, and pensions payable to the Judges of the High Court of Justice, and the ordinary Judges of the Court of

Appeal respectively, shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof: such salaries and pensions shall grow due from day to day, but shall be payable to the persons entitled thereto, or as their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year to the Treasury may from time to time determine.

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PART II.

JURISDICTION AND LAW.

16. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say,)

Jurisdiction
of High
Court of
Justice.

- (1.) The High Court of Chancery, as a Common Law Court as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court;
- (2.) The Court of Queen's Bench;
- (3.) The Court of Common Pleas at Westminster;
- (4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court;
- (5.) The High Court of Admiralty;
- (6.) The Court of Probate;
- (7.) The Court for Divorce and Matrimonial Causes;
- (8.) *The London Court of Bankruptcy*;
- (9.) The Court of Common Pleas at Lancaster;
- (10.) The Court of Pleas at Durham;
- (11.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions:

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions hereinafter contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts,

S. xvii.

respectively, sitting in Court or Chambers, or elsewhere, when acting as Judges or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such Judges or Judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdiction so transferred.

So much of this section as relates to the London Court of Bankruptcy is repealed by the Act of 1875. See note to s. 3, *ante*, p. 42.

The Court of the Chancellor of the County Palatine of Lancaster is not interfered with by the Act. See also s. 95, *post*, p. 112. But appeals from that Court will go to the Court of Appeal under s. 18, sub-s. 2, *post*, p. 53.

The whole of the jurisdiction of the Courts enumerated is transferred by this section to the High Court of Justice. But the procedure provided by the schedule of rules, *post*, p. 151 is not of such wide application. The practice of the Divorce Court remains unchanged; sec. 70, *post*, p. 97; s. 18 of the Act of 1875, *post*, p. 138. Order LXII., *post*, p. 312; so do criminal proceedings, sec. 71, *post*, p. 98; s. 19 of the Act of 1875, *post*, p. 137; Order LXII., *post*, p. 312; and proceedings on the Crown side of the Queen's Bench and the Revenue side of the Exchequer; Order LXII., *ubi supra*.

Jurisdiction
not trans-
ferred to
High Court.

17. There shall not be transferred to or vested in the said High Court of Justice, by virtue of this Act—

- (1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal in Bankruptcy :
- (2.) Any jurisdiction of the Court of Appeal in Chancery of the County Palatine of Lancaster :
- (3.) Any jurisdiction usually vested in the Lord Chancellor or in the Lords Justices of Appeal in Chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind :
- (4.) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or other writings, to be passed under the Great Seal of the United Kingdom :
- (5.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her Majesty as visitor of any College, or of any charitable or other foundation :
- (6.) Any jurisdiction of the Master of the Rolls in relation to records in London or elsewhere in England.

By s. 7 of the Act of 1875, it is enacted that “any jurisdiction usually vested in the Lords Justices of Appeal in Chancery, or either of them, in relation to the persons and estates of idiots, lunatics, and persons of unsound mind, shall be exercised by such Judge or Judges of the High Court of Justice or Court of Appeal as may be intrusted by the sign manual of Her Majesty or Her successors with the care and commitment of the custody of such persons and estates; and all enactments referring to the Lords Justices as so intrusted shall be construed as if such Judge or Judges so intrusted had been named therein instead of such Lords Justices: Provided that each of the persons who may at the commencement of the principal Act be Lords Justices of Appeal in Chancery shall, during such time as he continues to be a Judge of the Court of Appeal, and is intrusted as aforesaid, retain the jurisdiction vested in him in relation to such persons and estates as aforesaid.”

S. xviii.
—
Jurisdiction
of Lords
Justices in
respect of
lunatics.

18. The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following (that is to say):

Jurisdiction
transferred
to Court of
Appeal.

- (1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court as a Court of Appeal in Bankruptcy.
- (2.) All jurisdiction and powers of the Court of Appeal in Chancery of the county palatine of Lancaster, and all jurisdiction and powers of the Chancellor of the duchy and county palatine of Lancaster when sitting alone or apart from the Lords Justices of Appeal in Chancery as a Judge of re-hearing or appeal from decrees or orders of the Court of Chancery of the county palatine of Lancaster:
- (3.) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries assisted by his assessors, including all jurisdiction and powers of the said Lord Warden when sitting in his capacity of judge:
- (4.) All jurisdiction and powers of the Court of Exchequer Chamber:
- (5.) All jurisdiction vested in or capable of being exercised by Her Majesty in Council, or the Judicial Committee of Her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy.

As to the power given to Her Majesty in Council to transfer other appeals to the Court of Appeal than those dealt with by this

S. xix. section, see s. 21 (the operation of which is postponed), *post*, p. 55.
 — As to the jurisdiction of the Lords Justices in Lunacy, see note to the last section.

Appeals
 from High
 Court.

19. The said Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of Her Majesty's High Court of Justice, or of any judges or judge thereof, subject to the provisions of this Act, and to such Rules and Orders of Court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this Act.

For all the purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

By s. 45 (*post*, p. 81) the judgment of a Divisional Court upon an appeal from an inferior Court is to be final, unless leave to appeal be given. By sec. 47 (*post*, p. 83) the judgment of the Court for Crown Cases Reserved is final. By s. 49 no appeal lies except with leave, from any judgment or order made by consent, or as to costs only which by law are left to the discretion of the Court. By s. 50 an appeal does not lie direct to the Court of Appeal from an order made at Chambers without leave. As to appeal upon judgments or orders in interpleader, see note to Order I., Rule 2, *post*, pp. 152, 158.

No appeal
 from High
 Court or
 Court of
 Appeal to
 House of
 Lords or
 Judicial
 Committee.

20. No error or appeal shall be brought from any judgment or order of the High Court of Justice, or of the Court of Appeal, nor from any judgment or order, subsequent to the commencement of this Act, of the Court of Chancery of the County Palatine of Lancaster, to the House of Lords or to the Judicial Committee of Her Majesty's Privy Council; but nothing in this Act shall prejudice any right existing at the commencement of this Act to prosecute any pending writ of error or appeal, or to bring error or appeal to the House of Lords or to Her Majesty in Council, or to the Judicial Committee of the Privy Council, from any prior judgment or order of any Court whose jurisdiction is hereby transferred to the High Court of Justice or to the Court of Appeal.

By s. 2 of the Act of 1875, *post*, p. 126, the operation of this section as well as of ss. 21 and 55 is postponed to the 1st Nov., 1876. And until that time, "an appeal may be brought to the House of Lords from any judgment or order of the Court of

Appeal in any case in which any appeal or error might now be brought to the House of Lords or to Her Majesty in Council from a similar judgment, decree, or order of any Court or Judge whose jurisdiction is by the principal Act transferred to the High Court of Justice or the Court of Appeal, or in any case in which leave to appeal shall be given by the Court of Appeal."

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21. It shall be lawful for Her Majesty, if she shall think fit, at any time, hereafter, by Order in Council to direct that all appeals and petitions whatsoever to Her Majesty in Council which, according to the laws now in force, ought to be heard by or before the Judicial Committee of Her Majesty's Privy Council, shall from and after a time to be fixed by such order, be referred for hearing to and be heard by Her Majesty's Court of Appeal; and from and after the time fixed by such order, all such appeals and petitions shall be referred for hearing to and be heard by the said Court of Appeal accordingly, and shall not be heard by the said Judicial Committee; and for all the purposes of and incidental to the hearing of such appeals or petitions, and the reports to be made to Her Majesty thereon, and all orders thereon to be afterwards made by Her Majesty in Council, and also for all purposes of and incidental to the enforcement of any such Orders as may be made by the said Court of Appeal or by Her Majesty, pursuant to this section (but not for any other purpose), all the power, authority, and jurisdiction now by law vested in the said Judicial Committee shall be transferred to and vested in the said Court of Appeal.

Power to
transfer
jurisdiction
of Judicial
Committee

by Order in
Council.

The Court of Appeal, when hearing any appeals in Ecclesiastical Causes which may be referred to it in manner aforesaid, shall be constituted of such and so many of the judges thereof, and shall be assisted by such Assessors, being Archbishops or Bishops of the Church of England, as Her Majesty, by any General Rules made with the advice of the judges of the said Court, or any five of them (of whom the Lord Chancellor shall be one), and of the Archbishops and Bishops who are members of Her Majesty's Privy Council, or any two of them (and which General Rules shall be made by Order in Council), may think fit to direct: Provided that such Rules shall be laid before each House of Parliament within forty days of the making of the same, if Parliament be then sitting, or if not, then within forty days of the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament within the next subse-

S. xxii.

quent forty days on which the said House shall have sat, praying that any such Rules may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the Rules so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

See note to last section.

Transfer of
pending
business.

22. From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the said High Court of Justice and the said Court of Appeal respectively shall cease to be exercised, except by the said High Court of Justice and the said Court of Appeal respectively, as provided by this Act; and no further or other appointment of any judge to any Court whose jurisdiction is so transferred shall be made except as provided by this Act: Provided, that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by the same judges and officers, and generally in the same manner, in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act; and every judgment, decree, rule, or order of any Court whose jurisdiction is hereby transferred to the said High Court of Justice or the said Court of Appeal, which shall have been duly perfected at any time before the commencement of this Act, may be executed, enforced, and, if necessary, amended or discharged by the said High Court of Justice and the said Court of Appeal respectively, in the same manner as if it had been a judgment, decree, rule, or order of the said High Court or of the said Court of Appeal; and all causes, matters, and proceedings whatsoever, whether Civil or Criminal, which shall be pending in any of the Courts whose jurisdiction is so transferred as aforesaid at the commencement of this Act, shall be continued and concluded, as follows (that is to say), in the case of proceedings in error or on appeal, or of proceedings before the Court

1 Ch. 50. 445

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of Appeal in Chancery, in and before Her Majesty's Court of Appeal; and, as to all other proceedings, in and before Her Majesty's High Court of Justice. The said Courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the said High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be) down to the point at which the transfer takes place; and, so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued and concluded, in and before the said Courts respectively, either in the same or the like manner as they would have been continued and concluded in the respective Courts from which they shall have been transferred as aforesaid, or according to the ordinary course of the said High Court of Justice and the said Court of Appeal respectively (so far as the same may be applicable thereto), as the said Courts respectively may think fit to direct.

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23. The jurisdiction by this Act transferred to the said High Court of Justice and the said Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such Rules and Orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such Rules or Orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

Rules as to exercise of jurisdiction.

As to the power of making Rules and the purposes for which they may be made, see ss. 68 and 74, *post*, pp. 94, 97; and s. 17 of the Act of 1875, *post*, p. 135.

For the Rules now made see Schedule 1 to the last-mentioned Act, *post*, p. 151, and Additional Rules, *post*, p. 391.

24. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the Rules following:

Law and equity to be concurrently administered.

- (1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respon-

S. xxiv.

dent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.

This and the next section undertake to deal with the long-standing anomaly, to which so many palliations have from time to time been applied, but which has never been removed—by which different Courts recognize different rights and duties, apply different remedies to the same case, and in some cases even enforce rules of law actually in conflict with one another. The removal of the last-mentioned defect, actual conflict of law, is provided for by s. 25. The rest of the matter is dealt with in the present section.

The provisions of this section may be shortly summarised thus :—

The plaintiff may assert an equitable claim in any Court (*sub-s. 1*).

The plaintiff may obtain an equitable remedy in any Court (*ibid.*).

The defendant may raise any equitable answer or defence in any Court; that is to say, anything which would hitherto have been good by way of answer, if the suit had been brought in Chancery, (*sub-s. 2*), or would have afforded ground for an injunction if the action had been brought at law (*sub-s. 5*).

The defendant may assert, by way of counter claim against the plaintiff, any claim, legal or equitable, which he might have raised by a cross suit at law, or in equity (*sub-s. 3*).

The defendant may obtain any relief relating to or connected with the original subject of the action against any other person, whether already a party or not (*ibid.*).

All Courts are to recognize equitable rights incidentally appearing (*sub-s. 4*).

No cause is to be restrained by injunction; but what would have been ground for injunction is to be raised by way of defence, or upon an application to stay proceedings (*sub-s. 5*).

Subject to these provisions common law rights and duties are to be recognized (*sub-s. 6*).

Every Court is to apply all appropriate remedies, and dispose of all matters in controversy (*sub-s. 7*).

- {2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every

equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act. S. xxiv. 1 C.P.D. 145

- (3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant. 2 C.P.D. 223 4 C.P.D. 386

As to claims apt to claim 2 C.P.D. 736
As to counter claims see Order XIX., Rule 3, *post*, p. 205, and notes thereto; Order XXII., Rule 10, *post*, p. 220.

- (4.) The said Courts respectively, and every Judge thereof, shall recognize and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

as not apply to J. of
 Ch. D. 537
 S. xxiv.
 1 Ch. D. 155

(5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any Judgment, Decree, Rule, or Order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such Order as shall be just. *

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 1 Ch. D. 44, 155
 1 C. P. D. 4

- (6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of the Act, the said Courts respectively, and every Judge thereof, shall recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law or by any custom, or created by any Statute, in the same manner as the same would have been recognised and given effect to if this Act had not passed by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.
- (7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act, in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them

shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

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25. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in England as to the matters next hereinafter mentioned: Be it enacted as follows:

Rules of law upon certain points.

The present section undertakes to render uniform the rules of law administered in the several divisions of the Court in the point as to which they at present conflict. The method which has been adopted is to deal in the first ten sub-sections with specific cases in which conflicting rules have hitherto existed, and to provide what rule is to prevail for the future. The rule adopted is in general that of the Court of Chancery. But, in sub-s. 1, the Bankruptcy Rule, and in sub-s. 9, the Admiralty Rule, is adopted; and in sub-s. 8, one different in some respects from any hitherto in force. By sub-s. 11, it is enacted generally that in codes not specifically provided for, the equitable rule is to prevail.

Administration of assets of insolvent estates.

- (1) *In the administration by the Court of the assets of any person who may die after the passing of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable, and as to the valuation of annuities and future or contingent liabilities, respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person may come in under the decree or order for the administration of such estate and make such claims against the same as they may respectively be entitled to by virtue of this Act.*

This sub-section is repealed by s. 10 of the Act of 1875, *post*, p. 132. And the following provision is substituted:—

“Sub-section one of clause twenty-five of the principal Act is hereby repealed, and instead thereof the following enactments

S. xxv.

shall take effect: (that is to say) in the administration by the Court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the Law of Bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act."

In Chancery, in the administration of a debtor's estate, a secured creditor has been allowed to prove for and receive dividends upon the full amount of his claim, and afterwards to realise his security, paying over any surplus beyond the amount of his debt. And the same rule has prevailed in the winding up of companies. In Bankruptcy, unless the secured creditor gives up his security, he must have it valued or realised, and can only prove for the deficiency. The latter rule will for the future prevail in administering the estate of insolvent persons deceased and in winding up. The original section did not include winding up.

Statutes of
Limitation
inapplicable
to express
trusts.

- (2.) No claim of a *cestui que* trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

See 3 & 4 Will. IV., c. 27, s. 25; *Petre v. Petre* 1 Drew. 393.

Equitable
wastes.

- (3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate

Merger.

- (4.) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Suits for
possession of
land by
mortgagors.

- (5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take

possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

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- (6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.

Assignment of debts, and choses in action.

As to the practice in interpleader, see Order I., Rule 2, *post*, p. 152, and note thereto. *Old law 8 L. D. D. B. 3-4*

- (7.) Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in equity.

Stipulations not of the essence of contracts.

50 L. D. 378

S. XXV.

By s. 10, *post*, p. 132 of the Act of 1875, the commencement of the Act is substituted for the passing as the governing date in this sub-section.

As to the equitable construction of stipulations in contracts as to time: See *Tilley v. Thomas*, Law Rep. 3 Ch. 61.

Injunctions
and re-
ceivers.

104 D. 690
276 D. 115
186 D. 309

(8). A mandamus or an injunction may be granted or a receiver appointed by an interlocutory Order of the Court in all cases in which it shall appear to the Court to be just or convenient that such Order should be made; and any such Order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession), does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

This section empowers the Court (1) to grant a mandamus; (2) an injunction; (3) to appoint a receiver.

1.—MANDAMUS.

The power of the Court of Queen's Bench, by the prerogative writ of mandamus, at the instance of persons interested, to enforce legal rights of a public nature, where no other remedy exists, has been long exercised. It would be out of place to discuss at length here the principles on which that Court acts. See *Tapping on Mandamus*.

By the Common Law Procedure Act, 1854, ss. 68 to 74, all the Common Law Courts were given a limited power of enforcing by mandamus the specific performance of legal duties. Under those sections the plaintiff in any action, other than replevin or ejectment, was entitled to indorse on his writ a claim for, and in his declaration to claim, and the Court might grant a writ of mandamus commanding the defendant to fulfill any duty in the fulfilment of which the plaintiff was personally interested, and by the non-performance of which he showed in his declaration that he sustained or might sustain damage. It has been decided that the power so given is only in the case of duties of a public nature, not in the case of those arising simply by contract; *Benson v. Paull*, 6 E. & B. 273; *Norris v. Irish Land Co.*, 8 E. & B. 512. By the express terms of the Act it must be one in which the applicant is interested; and the remedy by mandamus is only available where there is no other effectual remedy; *Bush v. Beavan*, 1 H. & C. 500. Under this Act a mandamus has been granted to improvement commissioners, directing them to levy a rate to satisfy the claim of

the plaintiff, a creditor; *Ward v. Lowndes*, 1 E. & E. 940, 956; to apply their funds in payment of debentures; *Webb v. Commissioners of Herne Bay*, Law Rep. 5 Q. B. 642; to a railway company, compelling them to give a notice to treat and proceed with the purchase of lands as to which they have given notice under their Act of an intention to take; *Morgan v. Metropolitan Railway Co.*, Law Rep. 3 C. P. 553, 4 C. P. 97; see also *Tyson v. M. of London*, Law Rep. 7 C. P. 18; and to issue a precept for the assessment of compensation after a notice to treat has been given; *Fotherby v. Metropolitan Railway Co.*, Law Rep. 2 C. P. 188; *Guest v. Poole and Bournemouth Railway Co.*, Law Rep. 5 C. P. 553. See as to the discretion of the Court, *Nicholl v. Allen*, 1 B. & S. 916, 934.

The Court of Chancery has not used the process of mandamus, *eo nomine*. But in compelling the specific performance of contracts it has in substance used exactly the same mode of enforcing one class of rights which the Common Law Courts by mandamus have used in enforcing another.

The words of the present section are very wide: "A mandamus may be granted in all cases in which it shall appear to the Court to be just or convenient that such an order should be made." It may be said on the one hand, that these words cannot be intended merely to give to all divisions such powers for the specific enforcement of rights as have hitherto been exercised by any of the Courts. For this has been already fully provided for by s. 16 and s. 24, sub-s. 7, *ante*, pp. 51 and 60. And, moreover, the present section purports to deal not merely with procedure but with rules of law. On the other hand, it can hardly be supposed that the legislature intended by these few words to give power to enforce specifically all rights and duties whatever without regard to the doctrines previously well settled. Probably the true view is that mandamus is to be understood strictly in the sense in which it has been used in the Common Law Courts; that the subject matters, the classes of rights, to which it is applicable are unchanged; and that the effect of the new provision is, first, to give to the Court a very wide discretion as to the issue of the writ; and, secondly, to allow it to be issued upon an interlocutory application, instead of its necessarily being claimed upon the writ and by pleadings, without, in fact, an *action of mandamus* being brought within the meaning of the C. L. P. Act. See, however, as to indorsing the claim on the writ Order II., Rule 1, *post* p. 158, and note thereto. But it would be unsafe to speak with confidence until the words have received a judicial interpretation.

2.—INJUNCTION.

The power of the Common Law Courts to grant injunctions in ordinary actions has hitherto depended upon ss. 79 to 82 of the C. L. P. Act, 1854. Under that Act the plaintiff could only ask for an injunction when a breach of contract or other injury had actually been committed, for he must (s. 79) be entitled to maintain and have brought an action. As to when such a writ was granted, see Day's C. L. P. Act, pp. 325, *et seq.*, 4th. edit. Power to grant injunctions in patent cases was given by 15 & 16 Vict. c. 83, s. 42; but under that section too the injunction could only be issued when an action was pending, and therefore after a cause of action had arisen. And by 25 & 26 Vict. c. 88, s. 21, a like power was given as to trade marks.

The Court of Chancery has always, in the exercise of its traditional jurisdiction, granted injunctions to restrain the commission of

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threatened wrongs or the continuance or repetition of those already committed. But with regard to injunctions to restrain trespasses, somewhat refined distinctions have been drawn as to the power to interfere—first, according as the person sought to be restrained is in possession or not; and secondly, if out of possession, according as he is a mere trespasser or acts under colour of right. These distinctions have led to some uncertainty and inconvenience. See *Lowndes v. Bettle*, 33 L. J. Ch. 451, 10, Jur. (N. S.) 226; *Staaford v. Hurlstone*, Law Rep. 9 Ch. 116.

These distinctions the above clause does away with; for it authorizes the Court to grant an injunction to prevent any threatened or apprehended waste or trespass, *whether the person against whom such injunction is sought is or is not in possession, under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title.* As to indorsing the claim on the writ, see Order II. Rule 1, *post* p. 158, and note thereto.

3.—RECEIVERS.

The Common Law Courts have hitherto had no power to appoint receivers.

In Chancery the appointment of a receiver has been a remedy in familiar use. The Court, however, would not appoint a receiver at the instance of a mortgagee having the legal estate, or other person able to obtain protection at law: *Berkley v. Sewell*, J. & W. 647; *Buxton v. Monkhouse*, G. Coop. 41; *Kelsey v. Kelsey*, Law Rep. 17, Eq. 495. The present sub-section empowers the Court to appoint a receiver *in all cases in which it shall appear just and convenient.* If these words receive a construction as wide as they are certainly capable of, a very material change has been effected; for a legal mortgagee may obtain the appointment of receiver instead of taking the risk of entering on the property. But it is impossible to say with confidence how the words may be construed.

For rules as to the proceedings to obtain the relief authorized by this sub-section, and for provisions as to other protective orders having an analogous object, see Order LII., *post*, p. 292, and note thereto. As to indorsing the claim on the writ, see Order II., Rule 1. *post*, p. 158, and note thereto.

Damages by collisions at sea

(9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

The common law doctrine has been shortly this:—The man who seeks damages against another for negligence must show three things: first, the negligence; secondly, the damage sustained; thirdly, that the negligence caused the damage. If he proves the negligence and the damage, but it turns out that he has himself been guilty of negligence of such a kind, that but for it the damage would not have followed from the negligence of the defendant, he has failed to prove his third proposition. He is the author of his own wrong, and must bear the consequences. See per Parke B., in *Bridge v. Gd. Junction Ry. Co.*, 3 M. & W., 244, 248.

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In the Admiralty Court the rule has been that where both parties are to blame they must share the loss equally, so that in such a case the plaintiff recovers half his damages. See cases collected in Williams and Bruce Admiralty Practice, p. 72.

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It will be observed that it is only in case of collision between ships that the common law rule is changed. In all other cases it remains unaffected.

(10.) In questions relating to the custody and education of infants, the rules of Equity shall prevail.

The common law rule upon this subject is stated as follows in *Re. Relph* ^{*Relph v. Corcoran*} *Andrews*, Law Rep., 8 Q. B., at p. 158 :—"It appears to have been the invariable practice of the Common Law Court, on an application for a *habeas corpus* to bring up the body of the child obtained from the father (and the case would be the same as to a testamentary guardian), to enforce the father's right to the custody, even against the mother, unless the child be of an age to judge for himself, or there be an apprehension of cruelty from the father, or contamination, in consequence of his immorality or gross profligacy. If the infant be of an age to elect for himself, the Court will merely interfere so far as to get it free from illegal restraint, without handing it over to anybody. This was the course adopted in *Rex v. Delaval* (3 Burr. 1435), in the case of a girl eighteen years of age, who was delivered from a custody considered illegal, and left at liberty to go where she pleased. But, in the absence of any right of choice the Court goes further, and transfers the infant to the proper legal custody. The right to such an election, it has now been clearly decided, depends upon age alone, and not on mental capacity; see *Reg. v. Clarke*, 7 E. & B. 186; 26 L. J. (Q. B.), 169; and it may be taken as settled that no such choice can be made, at all events by a female infant, under the age of sixteen years."

The Court of Chancery, whenever there has been any trust property of which it would undertake the administration, and so make the infant a ward of court, has taken a less rigid view of the rights of the father or guardian, and looked more to the interest of the infant. Either father or guardian may lose his right to the custody of the child, not only by immorality of a nature likely to contaminate the child, or ill usage; but also by allowing the child to be brought up in a religion other than his own, or under the control and influence of persons other than himself, for so long a time and under such circumstances, that to allow him to reclaim the control of the child and the direction of its education, would be detrimental to its interest; *Lyons v. Blenkin*, Jac. 245; *Hill v. Hill*, 10 W. R. 400; *Andrews v. Salt*, Law Rep., 8 Ch. 622. After the decease of the father, the general rule is that the Court or guardian must have regard to the religion and the wishes of the father in bringing up the child. But under special circumstances the Court of Chancery has, on like grounds, disregarded the express or presumed desire of the deceased father with regard to the education of his child. *Stourton v. Stourton*, 8 D. M. & G. 760.

(11.) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of Equity and the rules of the Common Law with reference to the same matter, the rules of Equity shall prevail.

Cases of conflict not enumerated

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PART III.

SITTINGS AND DISTRIBUTION OF BUSINESS.

Abolition of
terms.

26. The Division of the legal year into terms shall be abolished so far as relates to the administration of justice ; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any commissioners to whom any jurisdiction may be assigned under this Act ; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to rules of court, the High Court of Justice and the Court of Appeal, and the judges thereof respectively, or any such commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such courts respectively, or of such judges or commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.

For the Rules as to the sitting of the court, see Order LXI., *post*, p. 308.

As to jurisdiction on circuit, see ss. 29 and 37, *post*, pp. 69, 77, and notes thereto.

Vacations.

27. Her Majesty in Council may from time to time, upon any report or recommendation of the judges by whose advice Her Majesty is hereinafter authorized to make rules before the commencement of this Act, and after the commencement of this Act upon any report or recommendation of the Council of Judges of the Supreme Court hereinafter mentioned, with the consent of the Lord Chancellor, make, revoke, or modify, orders regulating the vacations to be observed by the High Court of Justice and the High Court of Appeal, and in the offices of the said Courts respectively ; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this Act ; and rules of court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this Act. In the meantime, and subject thereto, the said vacations shall be fixed in the

same manner, and by the same authority, as if this Act had not passed. This section shall come into operation immediately upon the passing of this Act.

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As to the power to make rules before the commencement of the Act, see *post*, p. 135. As to Councils of Judges, see s. 75, *post*, p. 100.

By s. 17 of the Act of 1875, *post*, p. 138, the reference to Judges in this section is to be deemed to be to the Judges mentioned in that section.

As to Councils of Judges, see s. 75, *post*, p. 100.

As to vacations, See Order LXI., Rules 2 & 3, *post*, p. 308.

28. Provision shall be made by rules of court for the hearing, in London or Middlesex, during vacation by Judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

Sittings in vacation.

See Order LXI., Rules 5 to 9, *post*, p. 311.

29. Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any Judge or Judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act; and any commissioner or commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the said High Court of Justice; and, subject to any restrictions or conditions imposed by rules of court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the judge or judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a commissioner or commissioners as aforesaid, or at sittings to be held in Middlesex or London, as hereinafter in this Act mentioned, and such question or issue shall be tried and determined accordingly.

Jurisdiction of Judges of High Court on circuit.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

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By s. 26, *ante*. p. 68, subject to rules of Court, Commissioners of Assize may sit at any time or place. S. 37, *post*, p. 77, as modified by s. 8 of the Act of 1875, determines what judges are to go circuit. By s. 93, *post*, p. 111, the existing circuits are left unaffected for the present, so far as this Act is concerned. S. 23 of the Act of 1875, gives power to the Queen in Council to alter the circuits of the judges, and make the various changes necessary for that purpose.

A Commissioner of Assize, whether a judge of one of the Supreme Courts or not, has hitherto been a mere commissioner to try the issues of fact entered for trial, having power to try those only, and various incidental powers as to amending, certifying, and otherwise, chiefly conferred upon him by statute. Under this section every Commissioner of Assize constitutes a Court, with all the powers, therefore, of a Court. With regard to the powers and duties of the judge in disposing of the case at the trial, and with regard to trials generally, *see* s. 46, *post*, p. 82, and note thereto, and Order XXXVI., Rule 22, *post*, p. 253, and note thereto.

As to the right of any party to have issues of fact tried by a jury. See Order XXXVI., Rule 3, *post*, p. 249.

As to the power of a judge to order a trial by a jury. See *Ibid*, Rule 27, *post*, p. 256.

As to the power of a judge to send a question to the assizes for trial. See *Ibid*.

As to sittings in London and Middlesex. See the next section.

Sittings for trial by jury in London and Middlesex.

30. Subject to rules of court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Middlesex and London, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many judges as the business to be disposed of may render necessary. Any Judge of the High Court of Justice sitting for the trial of causes and issues in Middlesex or London, at any place heretofore accustomed, or to be hereafter determined by rules of court, shall be deemed to constitute a court of the said High Court of Justice.

As to the sittings and vacations, see Orders LXI., *post*, p. 308.

As to the provision that the judge is to constitute a court, see note to the last section.

As to the power of a judge to send a question for trial to these sittings, see Order XXXVI. Rule 29, *post*, p. 256.

Divisions of the High Court of Justice.

31. For the more convenient despatch of business in the said High Court of Justice (but not so as to prevent any judge from sitting whenever required in any Divisional Court, or for any judge of a different division from his own), there shall be in the said High Court five divisions consisting of such number of judges respectively as hereinafter mentioned. Such five divisions shall respectively include, immediately on the commencement of this Act, the several judges following; (that is to say)—

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- (1.) One division shall consist of the following judges ; (that is to say)—The Lord Chancellor, who shall be President thereof, the Master of the Rolls, and the Vice-Chancellors of the Court of Chancery, or such of them as shall not be appointed ordinary Judges of the Court of Appeal : S. xxxi.
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- (2.) One other division shall consist of the following judges ; (that is to say)—The Lord Chief Justice of England, who shall be President thereof, and such of the other Judges of the Court of Queen's Bench as shall not be appointed ordinary Judges of the Court of Appeal :
- (3.) One other division shall consist of the following judges ; (that is to say)—The Lord Chief Justice of the Common Pleas, who shall be President thereof, and such of the other Judges of the Court of Common Pleas as shall not be appointed ordinary Judges of the Court of Appeal :
- (4.) One other division shall consist of the following judges ; (that is to say)—The Lord Chief Baron of the Exchequer, who shall be President thereof, and such of the other Barons of the Court of Exchequer as shall not be appointed ordinary Judges of the Court of Appeal :
- (5.) One other division shall consist of two judges who, immediately on the commencement of this Act, shall be the existing Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes and the existing Judge of the High Court of Admiralty, unless either of them is appointed an ordinary Judge of the Court of Appeal. The existing Judge of the Court of Probate shall (unless so appointed) be the President of the said division, and subject thereto the Senior Judge of the said division, according to the order of precedence under this Act, shall be President.

The said five divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Division.

Any deficiency of the number of five judges for constituting, in manner aforesaid, immediately on the commencement of this Act, any one or more of the Queen's Bench, Common Pleas, and Exchequer Divisions, may be

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supplied by the appointment, under Her Majesty's Royal Sign Manual, either before or after the time fixed for the commencement of this Act, of one of the puisne justices or junior barons of any superior Court of Common Law from which no judge may be so appointed as aforesaid to the Court of Appeal, to be a judge of any division in which such deficiency would otherwise exist. And any deficiency of the number of three Vice-Chancellors, or of the two Judges of the Probate and Admiralty Divisions, at the time of the commencement of this Act, may be supplied by the appointment of a new judge in his place, in the same manner as if a vacancy in such office had occurred after the commencement of this Act.

Any judge of any of the said divisions may be transferred by Her Majesty, under Her Royal Sign Manual, from one to another of the said divisions.

Upon any vacancy happening among the judges of the said High Court, the judge appointed to fill such vacancy shall, subject to the provisions of this Act, and to any rules of court which may be made pursuant thereto, become a member of the same division to which the judge whose place has become vacant belonged.

Power to
alter Divi-
sions by
Order in
Council.

32. Her Majesty in Council may from time to time, upon any report or recommendation of the Council of Judges of the Supreme Court hereinafter mentioned, order that any reduction or increase in the number of divisions of the High Court of Justice, or in the number of the Judges of the said High Court who may be attached to any such division, may, pursuant to such report or recommendation, be carried into effect; and may give all such further directions as may be necessary or proper for that purpose; and such order may provide for the abolition on vacancy of the distinction of the offices of any of the following judges, namely, the Chief Justice of England, the Master of the Rolls, the Chief Justice of the Common Pleas, and the Chief Baron of the Exchequer, which may be reduced, and of the salaries, pensions, and patronage attached to such offices, from the offices of the other Judges of the High Court of Justice, notwithstanding anything in this Act relating to the continuance of such offices, salaries, pensions, and patronage; but no such Order of Her Majesty in Council shall come into operation until the same shall have been laid before each House of Parliament for thirty days on which that House shall have sat, nor if, within such period of thirty days, an address is presented to Her Majesty by either House of

Parliament, praying that the same may not come into operation. Any such order, in respect whereof no such address shall have been presented to Her Majesty, shall, from and after the expiration of such period of thirty days, be of the same force and effect as if it had been herein expressly enacted; provided always, that the total number of the Judges of the Supreme Court shall not be reduced or increased by any such order.

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As to Councils of Judges, see s. 75, *post*, p. 100.

33. All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court of Justice, shall be distributed among the several divisions and judges of the said High Court, in such manner as may from time to time be determined by any rules of court, or orders of transfer, to be made under the authority of this Act; and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said divisions respectively, in the manner hereinafter provided. Every document by which any cause or matter may be commenced in the said High Court shall be marked with the name of the division, or with the name of the judge, to which or to whom the same is assigned.

Rules of Court to provide for distribution of business.

As to the distribution of business among the several divisions, see ss. 34 and 35, *post*; s. 11 of the Act of 1875, *post*, p. 132 and Order V., Rule 4, *post*, p. 170, and note thereto.

With respect to the transfer of actions or questions, see ss. 35 and 36; s. 11, sub-s. 2 of the Act of 1875, *post*, p. 133; and Order LI., Rules 1, 2, 3, *post*, p. 290, and note thereto.

As to marking with the name of the division, see s. 35, and Order V., Rule 9, *post*, p. 171.

And as to marking with the name of a judge in the case of actions in the Chancery Division, see s. 42, *post*, p. 80.

34. There shall be assigned (subject as aforesaid) to the Chancery Division of the said court:—

Assignment of certain business to particular divisions of High Court subject to rules.

(1.) All causes and matters pending in the Court of Chancery at the commencement of this Act:

(2.) All causes and matters to be commenced after the commencement of this Act, under any Act of Parliament, by which exclusive jurisdiction in respect to such causes or matters has been given to the Court of Chancery, or to any judges or judge thereof respectively, except appeals from County Courts:

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- (3.) All causes and matters for any of the following purposes :
- The administration of the estates of deceased persons ;
 - The dissolution of partnerships or the taking of partnership or other accounts ;
 - The redemption or foreclosure of mortgages ;
 - The raising of portions, or other charges on land ;
 - The sale and distribution of the proceeds of property subject to any lien or charge ;
 - The execution of trusts, charitable or private ;
 - The rectification, or setting aside, or cancellation of deeds or other written instruments ;
 - The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases ;
 - The partition or sale of real estates ;
 - The wardship of infants and the care of infants' estates.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said Court :

- (1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this Act :
- (2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Common Pleas Divisions of the said Court :

- (1.) All causes and matters pending in the Court of Common Pleas at Westminster, the Court of Common Pleas at Lancaster, and the Court of Pleas at Durham, respectively, at the commencement of this Act :
- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas at Westminster, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Exchequer Division of the said Court :

- (1.) All causes and matters pending in the Court of Exchequer at the commencement of this Act ;

- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this Act had not passed ;
- (3.) *All matters pending in the London Court of Bankruptcy at the commencement of this Act ;*
- (4.) *All matters to be commenced after the commencement of this Act under any Act of Parliament by which exclusive jurisdiction in respect to such matters has been given to the London Court of Bankruptcy.*

This is repealed so far as relates to bankruptcy by the Act of 1875, *post*, p. 131. And it is provided instead, that a judge of the High Court shall be Chief Judge in Bankruptcy. See s. 3, *ante*, p. 42, and note thereto.

There shall be assigned (subject as aforesaid) to the Probate, Divorce, and Admiralty Division of the said High Court :

- (1.) All causes and matters pending in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of this Act ;
- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if this Act had not passed.

35. *Subject to any rules of court, and to the provisions hereinbefore contained, and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the divisions of the said High Court, not being the Probate, Divorce, and Admiralty Division thereof, as he may think fit, by marking the document by which the same is commenced, with the name of such division, and giving notice thereof to the proper officer of the Court ; provided that all interlocutory and other steps and proceedings in or before the said High Court, in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any rules of court and to the power of transfer) in the division of the said High Court to which such cause or matter is for the time being attached ; provided also, that if any plaintiff or petitioner shall at any time assign his cause or matter to any division of the said High Court to which, according to the rules of court or the provisions of this Act, the same ought not to be assigned,*

Option for any Plaintiff (subject to rules) to choose in what division he will sue.

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the Court, or any judge of such division, upon being informed thereof, may, on a summary application, at any stage of the cause or matter, direct the same to be transferred to the division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the Court or any judge thereof before any such transfer, shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper division of the said Court to which such cause or matter ought to have been assigned.

This section is repealed by the Act of 1875, *post*, pp. 132, 148, and the following provisions are substituted :—

Provision as to option for any Plaintiff (subject to rules) to choose in what division he will sue,—in substitution for 35 & 37 Vict. c. 66., s. 35.

S. 11. “ Subject to any Rules of Court and to the provisions of the principal Act and this Act and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such division, and giving notice thereof to the proper officer of the Court; provided, that—

- (1.) “ All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any rules of court and to the power of transfer) in the division of the said High Court to which such cause or matter is for the time being attached; and
- (2.) “ If any plaintiff or petitioner shall at any time assign his cause or matter to any division of the said High Court to which, according to the Rules of Court or the provisions of the principal Act or this Act, the same ought not to be assigned, the Court, or any Judge of such division, upon being informed thereof, may on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner or by any other party in any such cause or matter, and all orders made therein by the Court or any Judge thereof before any such transfer shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper division of the said Court to which such cause or matter ought to have been assigned; and
- (3.) “ Subject to Rules of Court, a person commencing any cause or matter shall not assign the same to the Probate, Divorce,

and Admiralty Division unless he would have been entitled to commence the same in the Court of Probate, or in the Court for Divorce and Matrimonial Causes, or in the High Court of Admiralty, if this Act had not passed."

S. xxxvi.

Under the section in its original form a plaintiff subject to rules of Court could not have commenced in the Probate, Divorce, and Admiralty division any action except such as would have been within the *exclusive* cognisance of the Probate, Divorce, or Admiralty Court. See also Order V., Rule 4, *post*, p. 170.

As to transfer, see Order LL, Rules 1 to 3, *post*, p. 290.

As to marking the writ with the name of the division and notice to the officer, see Order II., Rule 1, and Order V., Rule 9, *post*, pp. 158, 171.

36. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as rules of court may direct, from one Division or Judge of the High Court of Justice to any other division or judge thereof, or may by the like authority be retained in the division in which the same was commenced, although such may not be the proper division to which the same cause or matter ought, in the first instance, to have been assigned. *64. 2-77*

Power of transfer.

For Rules as to the transfer of causes, see Order LL, Rules 1, 2, 3, *post*, p. 290; and note thereto, where the subject is considered. See also s. 11 of the Act of 1875, *post*, p. 132, and in note to last section.

37. Subject to any arrangements which may be from time to time made by mutual agreement between the Judges of the said High Court, the sittings for trials by jury in London and Middlesex, and the sittings of Judges of the said High Court under Commissions of Assize, Oyer and Terminer, and Gaol Delivery, shall be held by or before Judges of the Queen's Bench, Common Pleas, or Exchequer Division of the said High Court; provided that it shall be lawful for Her Majesty, if she shall think fit, to include in any such commission any ordinary Judge of the Court of Appeal or any Judge of the Chancery Division to be appointed after the commencement of this Act, or any serjeant-at-law, or any of Her Majesty's counsel learned in the law, who, for the purposes of such commission, shall have all the power, authority, and jurisdiction of a Judge of the said High Court.

Sittings in London and Middlesex and on Circuits.

By s. 8 of the Act of 1875, *post*, p. 131, any Judge of the Probate, Divorce, and Admiralty Division appointed after the passing of that Act will be bound to go circuit, and to take part in the London and Middlesex sittings for trials by jury.

As to circuits, see s. 29, *ante*, p. 69; and as to the London and Middlesex sittings, s. 30, *ante*, p. 70, and notes to those sections. As to trials generally, see Order XXXVI., *post*, p. 248.

S. xxxviii.
 Rota of
 Judges for
 election pe-
 titions.

38. The judges to be placed on the rota for the trial of election petitions for England in each year, under the provisions of the "Parliamentary Elections Act, 1868," shall be selected out of the judges of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court of Justice in such manner as may be provided by any rules of court to be made for that purpose; and in the meantime, and subject thereto, shall be selected out of the judges of the said Queen's Bench, Common Pleas, and Exchequer Divisions of the said High Court, by the judges of such divisions respectively, as if such divisions had been named instead of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively, in such last-mentioned Act: Provided that the judges who, at the commencement of this Act, shall be upon the rota for the trial of such petitions during the then current year, shall continue upon such rota until the end of such year, in the same manner as if this Act had not passed.

Power of
 one or more
 Judges not
 constituting
 a Divisional
 Court.

39. Any judge of the said High Court of Justice may, subject to any rules of court, exercise in court or in chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in court or in chambers respectively, by a single judge of any of the courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorised to be so heard by any rules of court to be hereafter made. In all such cases, any judge sitting in court shall be deemed to constitute a court.

By s. 16, *ante*, p. 51, all the jurisdiction of any of the courts enumerated in that section is transferred to the High Court, including (subject to the exceptions there referred to) all jurisdiction vested in, or capable of being exercised by all, or any one or more of the judges of such courts sitting in court or chambers, or elsewhere.

This, and the following sections provide for the modes in which the Judges of the High Court may exercise the jurisdiction transferred:—

Three modes are provided:—

- I. By a judge in chambers.
- II. By a judge in court.
- III. By a divisional court.

I. As to chambers, by the above rule any jurisdiction which could heretofore have been exercised at chambers by a judge of *any* court may hereafter be exercised by any judge.

In the many cases in the Act and Rules in which jurisdiction is given to the Court or a judge, the application will no doubt be to a Judge at chambers where that is in accordance with the ordinary practice of the Division.

As to appeals from chambers see s. 50, *post*, p. 84; and as to practice at chambers see Order LIV., *post*, p. 297.

S. xl.

II. With regard to the power of a single judge in court, by the above rule all jurisdiction which might hitherto have been exercised in court by a judge of *any* Court may be exercised by any judge. By s. 42, *post*, p. 80, actions in the Chancery or Probate, Divorce, and Admiralty Division are to be heard, as heretofore, by a single judge in the first instance. By ss. 29 and 30, *ante*, p. 69, a commissioner of assize or a judge presiding at a trial by jury in London or Middlesex constitutes a Court.

III. The constitution of divisional courts is provided for by ss. 40 and 41, *post*, and the holding of them for the various divisions in ss. 41, 43, 44. By s. 41, subject to Rules of Court, all business in the Queen's Bench, Common Pleas, and Exchequer Divisions which would hitherto have been disposed of in banco may be dealt with by divisional courts.

By Order XXXIX., Rule 1, an application for a new trial in any of the last mentioned divisions must be to a divisional court; as must also an application under Order XL., Rules 4, 5, 6, to set aside the judgment ordered by the judge at the trial to be entered without any leave reserved. By s. 45, *post*, p. 81, appeals from inferior courts are to be heard by divisional courts.

40. Such causes and matters as are not proper to be heard by a single judge shall be heard by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such Divisional Courts may sit at the same time. A Divisional Court of the said High Court of Justice shall be constituted by two or three, and no more, of the judges thereof; and, except when through pressure of business or any other cause it may not conveniently be found practicable, shall be composed of three such judges. Every judge of the said High Court shall be qualified and empowered to sit in any of such Divisional Courts. The President of every such Divisional Court of the High Court of Justice shall be the senior judge of those present, according to the order of their precedence under this Act.

Divisional
Courts of the
High Court
of Justice.

41. Subject to any Rules of Court, and in the meantime until such rules shall be made, all business belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively of the said High Court, which, according to the practice now existing in the Superior Courts of Common Law, would have been proper to be transacted or disposed of by the Court sitting in Banc, if this Act had not passed, may be transacted and disposed of by Divisional Courts, which shall, as far as may be found practicable and convenient, include one or more judge or judges attached to the particular division of the said Court

Divisional
Courts for
business of
Queen's
Bench,
Common
Pleas, and
Exchequer
Divisions.

S. xlii.

—

to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every judge of such last-mentioned division, and also of every other judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part, if required, in the sittings of such Divisional Courts as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively; and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any Divisional Courts of the said High Court of Justice for any other purpose authorised by this Act, and also for the proper transaction of that part of the business of the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively, which ought to be transacted by one or more judges not sitting in a Divisional Court, shall be made from time to time under the direction and superintendence of the Judges of the said High Court; and in case of difference among them, in such manner as a majority of the said judges, with the concurrence of the Lord Chief Justice of England, shall determine.

See note to s. 39, *ante*, p. 78.

Distribution of business among the Judges of the Chancery and Probate, Divorce, and Admiralty Divisions of the High Court.

42. Subject to any rules of Court, and in the meantime until such rules shall be made, all business arising out of any cause or matter assigned to the Chancery or Probate, Divorce, and Admiralty Division of the said High Court shall be transacted and disposed of in the first instance by one judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively; and every cause or matter which, at the commencement of this Act, may be depending in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively, shall (subject to the power of transfer) be assigned to the same judge in or to whose court the same may have been depending or attached at the commencement of this Act; and every cause or matter which after the commencement of this Act may be commenced in the Chancery Division of the said High Court shall be assigned to one of the judges thereof, by marking the same with the name of such of the said judges as the plaintiff or petitioner (subject to the power of transfer)

may in his option think fit: Provided that (subject to any rules of Court, and to the power of transfer, and to the provisions of this Act as to trial of questions or issues by commissioners, in Middlesex or London,) all causes and matters which, if this Act had not passed, would have been within the exclusive cognizance of the High Court of Admiralty, shall be assigned to the present Judge of the said Admiralty Court during his continuance in office as a judge of the High Court.

S. xliii.

As to marking the writ, see Order II., Rule 1, *post*, p. 158, and note thereto.

As to transfer, see ss. 35 and 36, *ante*; s. 11, of the Act of 1875, *post*, p. 132; and Order LI., Rules 1, 2, 3, *post*, p. 290, and note thereto.

As to trials on circuit, and in London and Middlesex, see ss. 29 and 30, *ante*, p. 69; Order XXXVI., Rule 29, *post*, p. 256.

43. Divisional Courts may be held for the transaction of any part of the business assigned to the said Chancery Division, which the judge, to whom such business is assigned, with the concurrence of the President of the same division, deems proper to be heard by a Divisional Court.

Divisional
Courts for
business of
the Chancery
Division.

44. Divisional Courts may be held for the transaction of any part of the business assigned to the Probate, Divorce, and Admiralty Division of the said High Court, which the judges of such division, with the concurrence of the President of the said High Court, deem proper to be heard by a Divisional Court. Any cause or matter assigned to the said Probate, Divorce, and Admiralty Division may be heard at the request of the President of such Division, with the concurrence of the President of the said High Court, by any other judge of the said High Court.

Divisional
Courts for
business
belonging to
the Division.

45. All appeals from Petty or Quarter Sessions, from a County Court, or from any other inferior Court, which might before the passing of this Act have been brought to any Court or judge whose jurisdiction is by this Act transferred to the High Court of Justice, may be heard and determined by Divisional Courts of the said High Court of Justice, consisting respectively of such of the judges thereof as may from time to time be assigned for that purpose, pursuant to Rules of Court, or (subject to Rules of Court) as may be so assigned according to arrangements made for the purpose by the judges of the said High Court. The determination of such appeals respectively by such Divisional Courts shall be final unless

Appeals
from inferior
Courts to be
determined
by Divisional
Courts.

Appeals from County Ct to H Court, see 38 & 39 Vict. c. 50 s. 6.

s. xlvii

special leave to appeal from the same to the Court of Appeal shall be given by the Divisional Court by which any such appeal from an inferior Court shall have been heard.

There is no rule in the schedule of rules relating to such appeals from inferior Courts.

Cases and points may be reserved for or directed to be argued before Divisional Courts.

46. Subject to any rules of court, any judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case, or point in a case, to be argued before a Divisional Court; and any Divisional Court of the said High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued.

The practice of reserving points at the trial for the opinion of the Court in banc has been in constant use in the Common Law Courts: but it could only be done by consent. This section if it stood alone seems to place it, in all cases, in the discretion of the Judge. But s. 22 of the Act of 1875, *post*, p. 138, after reciting this section, enacts that nothing in the Acts or rules "shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the judge to the jury before whom the same shall come for trial with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues: Provided, also that the said right may be enforced either by motion in the High Court of Justice, or by motion in the Court of Appeal founded upon an exception entered upon or annexed to the record."

In order to appreciate the effect of the several provisions upon this point, it is necessary to observe the several ways in which questions of law arise or will arise in trials by jury.

One mode is this, the jury having certain issues to try, the judge has constantly to decide upon the admissibility of evidence, and upon other questions of law arising incidentally in the course of the trial of those issues. Questions of law so arising the judge can, as heretofore, only reserve by consent: for by the express terms of the provision just cited either party may insist upon having the judge's ruling, and may proceed thereupon in a manner closely resembling the old procedure by bill of exceptions. But several things should be considered in estimating the importance of the rule. In the first place a judge has power to direct issues to be settled and in case of disagreement to settle them himself; Order XXVI., *post*, p. 222. And there seems nothing in the terms of that order to prevent the judge at the trial from exercising this power. So that the judge may probably have no small control over what "the issues for trial by jury" are to be. In the second place (what is much more important) misdirection or the improper admission or rejection of evidence will be ground for a new trial only if some substantial wrong or miscarriage has been the result; Order XXXIX., Rule 3, *post*, p. 268. And in the third place a new trial may be granted of the question as to which a miscarriage has taken place without disturbing the finding as to any other question; *ibid.*

But questions of law will arise in another way. The judge will be a Court. And after the jury have found the facts, it will be for him to say what judgment any party is entitled to upon the facts so found. Questions arising in this way the judge may reserve without any consent, under the above section. And Order XXXVI., Rule 22, *post*, p. 253, expressly provides that he may either direct judgment simply, or direct judgment subject to leave to move, or leave the whole matter at large to be dealt with on motion for judgment.

S. xlvii.

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47. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the Justices of either Bench and the Barons of the Exchequer by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter seventy-eight, intituled "An Act for the further amendment of the administration of the Criminal Law," or any Act amending the same, shall and may be exercised after the commencement of this Act by the judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief Justice of England, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or one of such chiefs at least, shall be part. The determination of any such question by the judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said judges under the said Act of the eleventh and twelfth years of Her Majesty's reign.

Provision for Crown cases reserved.

2 Q. B. D. 37 43

By s. 71, *post*, p. 98, for which s. 19 of the Act of 1875 is now substituted, criminal procedure remains as it has been, unless and until altered by rule.

48. *Every motion for a new trial of any cause or matter on which a verdict has been found by a jury, or by a judge without a jury, and every motion in arrest of judgment, or to enter judgment non obstante veredicto, or to enter a verdict for plaintiff or defendant, or to enter a nonsuit, or to reduce damages, shall be heard before a Divisional Court; and no appeal shall lie from any judgment founded upon and applying to any verdict unless a motion has been made or other proceeding taken before a Divisional Court to set aside or reverse such verdict, or the judgment, if any, founded thereon, in which case an appeal shall lie to the Court of Appeal from the decision of the Divisional Court upon such motion or other proceeding.*

Motions for new trials to be heard by Divisional Courts.

This section is repealed by the Act of 1875, *post*, p. 148.

S. xlix.
What orders shall not be subject to Appeal.

49. No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court or judge making such order. *4 Ch. D. 749*

As to appeals generally, see s. 19, *ante*, p. 54; Order LVIII., *post*, p. 301.

As to discharging orders made in Chambers.

50. Every order made by a judge of the said High Court in Chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any Divisional Court, or by the judge sitting in court, according to the course and practice of the Division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the judge by whom such order was made, or of the Court of Appeal.

As to a judge's jurisdiction in chambers see s. 39, *ante*, p. 78, and note thereto. As to practice in chambers, see Order LIV., *post*, p. 297.

Provision for absence or vacancy in the office of a Judge.

51. Upon the request of the Lord Chancellor, it shall be lawful for any Judge of the Court of Appeal, who may consent so to do, to sit and act as a Judge of the said High Court or to perform any other official or ministerial acts for or on behalf of any judge absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of any division; and while so sitting and acting any such Judge of the Court of Appeal shall have all the power and authority of a judge of the said High Court.

Power of a single Judge in Court of Appeal.

52. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single judge of the Court of Appeal; and a single judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single judge may be discharged or varied by the Court of Appeal or a Divisional Court thereof.

With respect to the constitution of the Court of Appeal, see s. 4 of the Act of 1875, *post*, p. 127.

As to when an appeal lies, see s. 19, *ante*, p. 54, and note thereto.

For the practice upon appeal, see Order LVIII., *post*, p. 301.

53. *Every appeal to the Court of Appeal shall be heard or determined either by the whole court or by a Divisional Court consisting of any number, not less than three, of the judges thereof. Any number of such Divisional Courts may sit at the same time. Any appeal which for any reason may be deemed fit to be re-argued before decision or to be re-heard before final judgment may be so re-argued or re-heard before a greater number of judges if the Court of Appeal think fit so to direct.*

S. liii.
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Divisional
Courts of
Court of
Appeal.

This section is repealed by the Act of 1875, and the following provision substituted :—

S.12. "Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three judges of the said court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two judges of the said court sitting together.

Sittings of
Court of
Appeal.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Subject to the provisions contained in this section the Court of Appeal may sit in two divisions at the same time."

54. *No judge of the said Court of Appeal shall sit as a judge on the hearing of an appeal from any judgment or order made by himself or made by any Divisional Court of the High Court of which he was himself a member.*

Judges not
to sit on
appeal from
their own
judgments.

This is repealed by s. 4 of the Act of 1875, *post*, p. 128 ; and in the substituted provision instead of "was a member," the words are "was and is," from which would seem that "Divisional Court" is used for "Division."

55. All such arrangements as may be necessary or proper for the transaction of the business from time to time pending before the Court of Appeal, and for constituting and holding Divisional Courts thereof, shall be made by and under the direction of the President and the other *ex-officio* and ordinary Judges of the said Court of Appeal ; and if Her Majesty shall be pleased by Order in Council to direct that the hearing of such appeals and petitions to Her Majesty in Council as hereinbefore mentioned shall be referred to the said Court of Appeal, not less than one Divisional Court of the said Court of Appeal shall sit throughout the year (except during vacations) for the hearing of such of the appeals and petitions so referred as may from time to time be depending and ready for hearing, which Divisional Court shall be composed (as far as may be found practicable) of Judges of the Court of Appeal who are also members of Her Majesty's Privy Council ; and any member of Her Majesty's Privy Council who, having held the office of a judge in the

Arrange-
ments for
business of
Court of
Appeal, and
for hearing
Appeals
transferred
from the
Judicial
Committee
of the Privy
Council.

S. lvi.

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East Indies or in any of Her Majesty's dominions beyond the seas, shall have been appointed by Her Majesty, under the Acts relating to the Judicial Committee of the Privy Council, to attend the sittings of the said Judicial Committee, may attend the sittings of any such Divisional Court of the Court of Appeal; and with respect to the place of sitting of any such last-mentioned Divisional Court, and any attendance or service therein, or in aid of the proceedings thereof, which may be required from the Registrar or any other officer of Her Majesty's Privy Council, all such arrangements as may be necessary or proper shall be made by the Lord Chancellor, as President of the Court of Appeal, with the concurrence of the President for the time being of Her Majesty's Privy Council; and the President of Her Majesty's Privy Council shall from time to time give such directions to the Registrar and other officers of the said Privy Council as may be necessary or proper for the purpose of carrying such last-mentioned arrangements into effect.

By s. 2 of the Act of 1875, *post*, p. 126, the operation of this section, as well as that of ss. 20 & 21, is suspended until the 1st November, 1876.

PART IV.

TRIAL AND PROCEDURE.

References
and assess-
sors.

56. Subject to any rules of court and to such right as may now exist to have particular cases submitted to the verdict of a jury, any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice or before the Court of Appeal, may be referred by the Court or by any Divisional Court or judge before whom such cause or matter may be pending, for inquiry and report to any official or special referee, and the report of any such referee may be adopted wholly or partially by the Court, and may (if so adopted) be enforced as a judgment by the Court. The High Court or the Court of Appeal may also, in any such cause or matter as aforesaid in which it may think it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such special referees or assessors shall be determined by the Court.

See note to the next section.

57. In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or a judge, conveniently be made before a jury, or conducted by the Court through its other ordinary officers, the Court or a judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before an official referee, to be appointed as hereinafter provided, or before a special referee to be agreed on between the parties; and any such special referee so agreed on shall have the same powers and duties and proceed in the same manner as an official referee. All such trials before referees shall be conducted in such manner as may be prescribed by rules of court, and subject thereto in such manner as the Court or judge ordering the same shall direct.

S. lvii.
—
Power to
direct trials
before
Referees.

*Not a case of
fraud s.l.d. 592*

With respect to references to referees generally, their powers, the modes of procedure before them, and the remedy by way of appeal from them, see Order XXXVI., Rules 30 to 34, *post*, p. 256, and note thereto, where the subject is fully considered.

As to the appointment of Official Referees, see s. 83, *post*, p. 106.

58. In all cases of any reference to or trial by referees under this Act the referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of such reference or trial as shall be prescribed by rules of court or (subject to such rules) by the Court or judge ordering such reference or trial; and the report of any referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of a jury.

Power of
Referees and
effect of their
findings.

See note to the last section.

59. With respect to all such proceedings before referees and their reports, the Court or such judge as aforesaid shall have, in addition to any other powers, the same or the like powers as are given to any Court whose jurisdiction is hereby transferred to the said High Court with respect to references to arbitration and proceedings before arbitrators and their awards respectively, by the Common Law Procedure Act. 1854.

Powers of
Court with
respect to
proceedings
before
Referees.

*See Referee's
Act, D. 669*

See note to s. 57. The sections of the C. L. P. Act, 1854, relating to arbitration, will be found set out in the note to Order XXXVI., Rule 30, *post*, p. 258.

S. 1x.
Her Majesty
may estab-
lish District
Registries in
the country
for the
Supreme
Court.

60. And whereas it is expedient to facilitate the prosecution in country districts of such proceedings as may be more speedily, cheaply, and conveniently carried on therein, it shall be lawful for Her Majesty, by Order in Council, from time to time to direct that there shall be District Registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned : and Her Majesty may thereby appoint that any Registrar of any County Court, or any Registrar or Prothonotary or District Prothonotary of any local Court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a District Registrar of the Court of Probate, or of the Admiralty Court, shall under this Act become and be a District Registrar of the said High Court of Justice, or who shall hereafter be appointed such District Registrar, shall and may be a District Registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned. This section shall come into operation immediately upon the passing of this Act.

This section is amended by s. 13, of the Act of 1875, which is as follows :—

Amendment
of s. 60 of
36 & 37 Vict.
c. 66 as to
District
Registrars.

S. 13. "Whereas by s. 60 of the principal Act it is provided that for the purpose of facilitating the prosecution in country districts of legal proceedings, it shall be lawful for Her Majesty by Order in Council from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined : and whereas it is expedient to amend the said section, be it therefore enacted that—

Where any such order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said order, or any order in council amending the same.

Moreover the registrar of any inferior court of record having jurisdiction in any part of any district defined by such order (other than a county court) shall, if appointed by Her Majesty, be qualified to be a district registrar for the said district, or for any and such part thereof as may be directed by such order or any order amending the same.

Every district registrar shall be deemed to be an officer of the Supreme Court, and be subject accordingly to the jurisdiction of such court, and of the divisions thereof."

An Order in Council has been made in pursuance of this section, establishing a number of District Registries and defining their districts. See the Order, *post*, p. 418.

61. In every such district registry such seal shall be used as the Lord Chancellor shall from time to time, either before or after the time fixed for the commencement of this Act, direct, which seal shall be impressed on every writ and other document issued out of or filed in such district registry, and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such district registry, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

S. lxi.
Seals of
District
Registries.

62. All such district registrars shall have power to administer oaths and perform such other duties in respect of any proceedings pending in the said High Court of Justice or in the said Court of Appeal as may be assigned to them from time to time by rules of court, or by any special order of the Court.

Powers of
District
Registrars.

As to the powers of District Registrars, see Order XXXV., *post*, p. 242.

63. *The Lord Chancellor, with the sanction of the Treasury, may, either before or after the commencement of this Act, fix, and may afterwards, with the like sanction, from time to time alter, a table of fees to be taken by such district registrars in respect of all business to be done under this Act; and such fees shall be received and collected by stamps, denoting in each case the amount of the fee payable. The provisions of the "Courts of Justice (Salaries and Fees) Act, 1869," as to fees to be taken by stamps, shall apply to the fees to be received and collected by stamps under this Act.*

Fees to be
taken by
District
Registrars.

This section is repealed by the Act of 1875. The latter Act, s. 26, *post*, p. 141, gives a general power to the Lord Chancellor, with the advice and consent of the judges, or any three of them, and with the concurrence of the Treasury, to fix the fees to be taken in the Supreme Court generally, including, of course, those to be taken in District Registries.

64. Subject to the rules of court, in force for the time being, writs of summons for the commencement of actions in the High Court of Justice shall be issued by the district registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice, or by any judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to such action in the said High Court down to and including

Proceedings
to be taken
in District
Registries.

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entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before a district registrar, and recorded in the district registry, in such manner as may be prescribed by rules of court; and all such other proceedings in any such action as may be prescribed by rules of court shall be taken and if necessary may be recorded in the same district registry.

As to proceedings in District Registries generally see Order V., Rule 1; Order XII., Rules 1 to 5; Order XXXV., *post*, pp. 168, 181, 242, and notes thereto.

Power for
Court to
remove pro-
ceedings
from District
Registries.

65. Any party to an action in which a writ of summons shall have been issued from any such district registry shall be at liberty at any time to apply, in such manner as shall be prescribed by rules of court, to the said High Court, or to a judge in chambers of the division of the said High Court to which the action may be assigned, to remove the proceedings from such district registry into the proper office of the said High Court; and the Court or judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein shall upon receipt of such order be transmitted by the district registrar to the proper office of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper office in London; or the Court or judge, if it be thought right, may thereupon direct that the proceedings may continue to be taken in such District Registry.

As to removal from the District Registry, and also as to removal from London to a District Registry, see Order XXXV., Rules 12 to 15, *post*, p. 246, and note thereto.

Accounts
and inquiries
may be
referred to
District
Registrars.

66. It shall be lawful for the Court, or any judge of the division to which any cause or matter pending in the said High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such district registrar as aforesaid; and in any such case the district registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district

registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the Court, as to the Court shall seem fit.

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As to the production of documents, see Order XXXI., *post*, p. 232, and note thereto.

As to inquiries and accounts, see Order XXXIII., *post*, p. 239.

67. The provisions contained in the fifth, seventh, eighth, and tenth sections of the County Courts Act, 1867, shall apply to all actions commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a County Court.

30 & 31 Vict.
c. 142, ss. 5, 7,
8, and 10 to
extend to
actions in
High Court.

In order to appreciate the effect of this section, it will be convenient to examine first the sections of the County Courts Act, 1867, referred to, and the construction which has been put upon them, and then to endeavour to apply the language of the present section to them.

*See as to costs
Thompson
actions, 5 Ch. D.
779*

By the County Courts Act, 1867 (30 & 31 Vict. c. 142) s. 5 :—

“If in any action commenced after the passing of this Act in any of Her Majesty’s Superior Courts of Record the plaintiff shall recover a sum not exceeding twenty pounds if the action is founded on contract, or ten pounds if founded on tort, whether by verdict, judgment by default, or on demurrer, or otherwise, he shall not be entitled to any costs of suit unless the judge certify on the record that there was sufficient reason for bringing such action in such superior Court, or unless the Court or a judge at chambers shall by rule or order allow such costs.”

Costs not recoverable in superior Courts where less than £20 on contract or £10 on tort.

It has been held that the words “commenced after the passing of this Act,” are to be treated as parenthetical, and that this section applies to the case of an action commenced in an inferior Court and removed into a superior Court by *certiorari*, at the instance of the defendant; *Pellas v. Brestauer*, Law Rep., 6 Q. B. 438. It has also been held that the section applies to “any action” in the widest sense, even such as could not be brought in a County Court, *Sampson v. Mackay*, Law Rep., 4 Q. B. 643; though the fact that the action could not have been brought in a County Court, may be a material fact to consider in determining whether costs should be allowed or not; *Craven v. Smith*, Law Rep. 4 Ex., 146; *Gray v. West*, Law Rep. 4 Q. B., 175; *Sampson v. Mackay*, *ubi supra*. The section has also been held to apply to actions under the Bills of Exchange Act (see *post*); *Holbrow v. Jones*, Law Rep. 4 C. P., 14. With regard to the case of a defendant added after action brought see *Balmain v. Lickfold*, Law Rep. 10 C. P., 203. As to what are actions founded on contract, and what on tort within the meaning of this section, see *Tattan v. G. W. Ry. Company*, 2 E. & E. 844; *Legge v. Tucker*, 1 H. & N., 500; *Baylis v. Lintott*, Law Rep. 8 C. P., 345.

The word “recover” applies to all cases in which the plaintiff obtains a judgment for less than the specified amount; as, for instance, where the action is referred; *Cowell v. Anman Company*, 6 B. & S., 333; *Robertson v. Sterne*, 13 C. B. N. S., 248; *Smith v. Edge*, 2 H. & C. 659; *Moore v. Watson*, Law Rep. 2 C. P., 314. So where money less than the specified sum is paid into Court and accepted in satisfaction; *Parr v. Lilliecap*, 1 H. & C., 615; *Boulding v. Tyler*, 3 B. & S., 472.

S. LXVII.

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A like construction has been applied when the plaintiff's claim has been reduced by set off; *Ashcroft v. Foulkes*, 18 C. B., 261; *Beard v. Perry*, 2 B. & S., 493. A somewhat different question may arise if the plaintiff's claim is reduced, not by a set off proper, but by a counterclaim raised under the provisions of s. 24 of the present Act. With reference to this, it may not be immaterial to consider those cases in which a plaintiff has combined two separate and distinct claims in the same action, and it has been held that for the purposes of costs they might be treated as two actions; see *Smith v. Harnor*, 3 C. B. N. S., 829; *Blackmore v. Higgs*, 15 C. B. N. S., 790.

Two modes, it will be observed, are provided, in which in cases within the section a plaintiff may get his costs. The first is a certificate of the judge that there was sufficient ground for bringing the action in the superior Court. The word judge includes the Judge of a County Court to which the case is sent for trial; *Taylor v. Cass*, Law Rep. 4 C. P. 614; and an Under-Sheriff executing a writ of enquiry; *Craven v. Smith*, Law Rep. 4, Ex. 146. The certificate is to be upon the record. This has hitherto in ordinary cases been the *Nisi Prius* record. Probably the record for this purpose will ordinarily be for the future, the copy of the pleadings delivered by the party entering the cause for trial under Order XXXVI., Rule 17. At *Nisi Prius* the associate will make an entry of such certificate, under Order XXXVI., Rule 23. And his certificate, it may be presumed, will be the proper evidence of it. See *Ibid*, Rules 24 and 25. In the case of a County Court Judge, the issue sent to the County Court, and in the case of an Under-Sheriff the writ of inquiry is a sufficient record upon which to certify; *Taylor v. Cass*, *ubi supra*. The certificate need not be given during the assizes at which the cause is tried; *Bennett v. Thompson*, 6 E. & B., 683.

Secondly, the plaintiff may apply to the Court, or to a judge at chambers, for a rule or order allowing his costs. The Court will not ordinarily overrule the discretion exercised by the judge at the trial, though the decisions upon this point are not quite uniform; *Hatch v. Lewis*, 7 H. & N., 367; *Hinde v. Sheppard*, Law Rep. 7 Ex. 21; *Fitters v. Alfrey*, Law Rep. 10 C. P., 29; *Strachey v. Lord Osborne*, Law Rep. 10 C. P., 92. But upon new materials or a different view of the case, the Court have allowed costs where the judge had refused to certify; *Sampson v. Mackay*, Law Rep. 4 Q. B., 643; *Courtenay v. Wagstaff*, 16 C. B. N. S., 110.

Lord Denman's Act, 3 & 4 Vict. c. 24, s. 2, by which a plaintiff recovering less than 40s. in an action of tort is deprived of costs unless the judge certify that the action was brought to try a right or that the wrong was wilful and malicious, is still in force. In cases within it, therefore, a certificate under each Act is necessary; *Powle v. Gandy*, 7 C. B. N. S. 556. So if a plaintiff in slander recover less than 40s. damages he cannot by 21 Jac. 1. c. 16, s. 6, have more costs than damages, though he obtain certificates both under Lord Denman's Act and the County Court Act; *Marshall v. Martin*, Law Rep. 5, Q. B., 239. See also *Smith v. Halsey*, Law Rep. 8, Ex. 16.

In certain cases Judge of Superior Courts may order cause to be tried in County Court.

By s. 7: "Where in any action of contract brought or commenced in any of Her Majesty's superior Courts of Common Law the claim endorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment, an admitted set off or otherwise, to a sum not exceeding fifty pounds, it shall be lawful for the defendant in the action, within eight days from the day upon which the writ shall have been served upon him,

if the whole or part of the demand of the plaintiff be contested, to apply to a Judge at Chambers for a summons to the plaintiff to show cause why such action should not be tried in the County Court or one of the County Courts in which the action might have been commenced; and on the hearing of such summons the Judge shall, unless there be good cause to the contrary, order such action to be tried accordingly, and thereupon the plaintiff shall lodge the original writ and the order with the Registrar of the County Court mentioned in the order, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the Registrar to both parties or their attorneys, and the cause and all proceedings therein shall be heard and taken in such County Court as if the action had been originally commenced in such County Court; and the costs of the parties in respect of proceedings subsequent to the order of the Judge of the superior Court shall be allowed according to the scale of costs in use in the County Courts, and the costs of the proceedings previously had in the superior Court shall be allowed according to the scale in use in such latter Court."

This section, it will be observed, is in its terms limited to actions of (a) contracts (b) in a Common Law Court (c), in which the claim endorsed is not more than £50. The application can only be made by the defendant, and within eight days after the service of the writ. The cause, if an order is made, becomes for all purposes a County Court cause, and the superior Court has no further control over it; *Moody v. Steward*, 19 W. R., 161.

The power given by this section must not be confounded with that under 19 & 20 Vict., c. 108, s. 26, on the application of either party after issue joined, to order the trial of an action of contract to take place in a County Court, the action still remaining one in the superior Court; see *Wheatcroft v. Foster*, E. B. & E., 737; *Balmforth v. Pledge*, Law Rep., 1 Q. B., 427. This last-mentioned power is not in terms affected by the present Judicature Act.

By s. 8: "Where any suit or proceedings shall be pending in the High Court of Chancery, which suit or proceeding might have been commenced in a County Court, it shall be lawful for any of the parties thereto to apply at Chambers to the judge to whose Court the said suit or proceeding shall be attached to have the same transferred to the County Court or one of the County Courts in which the same might have been commenced, and such judge shall have power upon such application, or without such application if he shall see fit, to make an order for such transfer, and thereupon such suit or proceeding shall be carried on in the County Court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal that they would have had had the suit or proceeding been commenced in the County Court."

Transfer under this section has been held to be a matter for the discretion of the Vice-Chancellor before whom the cause is pending, with which the Court of Appeal would not interfere. See *Linford v. Gudgeon*, Law Rep. 6 Ch. 359.

By s. 10: "It shall be lawful for any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of Tort may be brought in a Superior Court to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, and thereupon a judge of the Court in which the action is brought shall have power to make an order that unless the plaintiff shall, within a time to be

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Proceedings in Equity may be transferred to County Courts which might have commenced therein.

Actions for malicious Prosecution, &c., brought in Superior Courts may be remitted to County Court by Judge.

s. lxxviii.

therein mentioned, give full security for the defendant's costs to the satisfaction of one of the masters of the said Court, or satisfy the judge that he has a cause of action fit to be prosecuted in the Superior Court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the judge as aforesaid, that the cause be remitted for trial before a County Court to be therein named; and thereupon the plaintiff shall lodge the original writ and the order with the registrar of such County Court, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys; and the County Court so named shall have all the same powers and jurisdiction with respect to the cause as if both parties had agreed, by a memorandum signed by them, that the said County Court should have power to try the said action, and the same had been commenced by plaint in the said County Court; and the costs of the parties in respect of the proceedings subsequent to the order of the judge of the Superior Court shall be allowed according to the scale of costs in use in the County Courts, and the costs of the proceedings in the Superior Court shall be allowed according to the scale in use in such latter Court."

This section is limited to actions of tort. The application may be made at any time, but only by the defendant. The effect of the order is to transform the action into a County Court Cause.

It remains to apply the words of the present section of the Judicature Act to those of the County Courts Act.

As to s. 5, it takes away from the plaintiff the right to costs in certain contingencies. If the two sections are read together they would seem to run thus: If in any action in which any relief is sought which could be given in a county court, the plaintiff shall recover a sum not exceeding £20 if the action is founded on contract, or £10 if founded on tort, &c., &c.

The 7th, 8th, and 10th sections give power in certain actions of contract, in certain chancery suits and proceedings, and in actions of tort, to remit the matter to the County Court, but by a different process, and subject to different conditions in the cases falling within each section. The new section says in terms that each of these sections shall apply to all actions in which any relief is sought which can be given in a county court.

With respect to the relief which can be given in a county court see ss. 88 to 91, *post*, pp. 109, 110.

It must be observed that this section applies in terms to actions pending at the commencement of the Act as well as those commenced afterwards.

Rules of Court may be made by Order in Council before commencement of the Act.

68. *Subject to the provisions of this Act, Her Majesty may at any time before the commencement of this Act, by and with the advice of the Lord Chancellor, the Lord Chief Justice of England, and the other judges of the several Courts intended to be united and consolidated by this Act, or of the greater number of them (of whom the Lord Chancellor and the Lord Chief Justice of England shall be two), cause to be prepared rules, in this Act referred to as rules of court, providing as follows:—*

(1.) *For the regulation of the sittings of the High Court*

of Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the judges of the said High Court sitting in Chambers;

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- (2.) *For the regulation of circuits, including the times and places at which they are to be holden and the business to be transacted thereat;*
- (3.) *For the regulation of all matters consistent with or not expressly determined by the rules contained in the schedule hereto, which, under and for the purposes of such last-mentioned rules, require to be, or conveniently may be defined or regulated by further rules of court;*
- (4.) *And, generally, for the regulation of any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or to the costs of proceedings therein, or to the conduct of civil or criminal business coming within the cognizance of the said Courts respectively, for which provision is not expressly made by this Act or by the rules contained in the schedule hereto.*

All rules of court made in pursuance of this section shall be laid before each House of Parliament within forty days next after the same are made, if Parliament is then sitting, or if not, within forty days after the then next meeting of Parliament; and if an address is presented to Her Majesty by either of the said Houses, within the next subsequent forty days on which the said House shall have sat, praying that any such rules may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the rules so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same. This section shall come into operation immediately on the passing of this Act.

Rules to be laid before Parliament, and may be annulled on address from either House.

This section, as well as ss. 69, 70, and 74, by which the making of rules was to be governed, are repealed by the Act of 1875, and the following provisions are substituted :—

S. 16. "The Rules of Court in the first schedule to this Act shall come into operation at the commencement of this Act, and as to all matters to which they extend shall thenceforth regulate the proceedings in the High Court of Justice and Court of Appeal. But such Rules of Court and also all such other Rules of Court (if any) as may be made after the passing and before the commencement of this Act under the authority of the next section may be annulled or altered by the authority by which new Rules of Court may be made after the commencement of this Act."

Rules in First Schedule in substitution for 36 & 37 Vict. c. 66, s. 69 and Schedule.

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Provisions as to making, &c., of Rules of Court before or after the commencement of the Act,—in substitution for 36 & 37 Vict. c. 66, ss. 68, 69, 74, and Schedule.

S. 17. "Her Majesty may at any time after the passing and before the commencement of this Act, by Order in Council, made upon the recommendation of the Lord Chancellor, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and the Lords Justices of Appeal in Chancery, or any five of them, and the other judges of the several Courts intended to be united and consolidated by the principal Act as amended by this Act, or of a majority of such other Judges, make any further or additional Rules of Court for carrying the principal Act and this Act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the Rules in the first Schedule to this Act; that is to say,

- (1.) For regulating the sittings of the High Court of Justice and the Court of Appeal, and of any divisional or other Courts thereof respectively, and of the Judges of the said High Court sitting in Chambers; and
- (2.) For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal; and
- (3.) Generally, for regulating any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein.

In substitution for 36 & 37 Vict. c. 66, s. 74.

From and after the commencement of this Act, the Supreme Court may at any time, with the concurrence of a majority of the Judges thereof present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), alter and annul any Rules of Court for the time being in force, and have and exercise the same power of making Rules of Court as is by this section vested in Her Majesty in Council on the recommendation of the said Judges before the commencement of this Act.

All Rules of Court made in pursuance of this section shall be laid before each House of Parliament within such time, and shall be subject to be annulled in such manner as is in this Act provided.

All Rules of Court made in pursuance of this section, if made before the commencement of this Act, shall from and after the commencement of this Act shall from and after they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this section.

The reference to certain Judges in section twenty-seven of the principal Act, shall be deemed to refer to the Judges mentioned in this section as the Judges on whose recommendation an Order in Council may be made."

Additional power as to regulation of practice and procedure by Rules of Court.

S. 24. "Where any provisions in respect of the practice or procedure of any Courts, the jurisdiction of which is transferred by the principal Act or this Act to the High Court of Justice or the Court of Appeal, are contained in any Act of Parliament, Rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal, without prejudice nevertheless to any power of the Lord Chancellor, with the concurrence of the Treasury, to make any Rules with respect to the Paymaster General, or otherwise.

Any provisions relating to the payment, transfer, or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

The Lord Chancellor, with the concurrence of the Treasury, may from time to time, by order, determine to what accounts and how intitled any such money or property as last aforesaid, whether paid, transferred, or deposited before or after the commencement of this Act, is to be carried, and modify all or any forms relating to such accounts; and the Governor and Company of the Bank of England, and all other companies, bodies corporate, and persons shall make such entries and alterations in their books as may be directed by the Lord Chancellor, with the concurrence of the Treasury, for the purpose of carrying into effect any such order."

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S. 25. "Every Order in Council and Rule of Court required by this Act to be laid before each House of Parliament shall be so laid within forty days next after it is made, if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament, within the next subsequent forty days on which the said House shall have sat, praying that any such Rule or Order may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the Rule or Order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Orders and Rules to be laid before Parliament, and may be annulled on address from either House.

This section shall come into operation immediately on the passing of this Act."

69. *The rules contained in the schedule to this Act (which shall be read and taken as part of this Act) shall come into operation immediately on the commencement of this Act, and, as to all matters to which they extend, shall thenceforth regulate the proceedings in the High Court of Justice and the Court of Appeal respectively, unless and until, by the authority hereinafter in that behalf provided, any of them may be altered or varied; but such rules, and also all rules to be made before the commencement of this Act, as hereinbefore mentioned, shall for all the purposes of this Act be rules of court capable of being annulled or altered by the same authority by which any other rules of court may be made, altered, or annulled after the commencement of this Act.*

Rules in Schedule to regulate procedure till changed by other rules after commencement of Act.

This section is repealed by the Act of 1875, see note to last section.

70. *All rules and orders of court which shall be in force in the Court of Probate, the Court for Divorce and Matrimonial Causes, the Admiralty Court, and the London Court of Bankruptcy respectively at the time of the commencement of this Act, except so far as they are hereby expressly varied, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively in the same manner in all respects as if they had been contained in the schedule to this Act until they shall respectively be altered*

Rules of Probate, Divorce, Admiralty, and Bankruptcy Courts to be Rules of the High Court.

S. lxxi. — *or annulled by any rules of Court made after the commencement of this Act.*

This section is repealed by the Act of 1875, and the following section substituted :—

Provision as to Rules of Probate, Divorce, and Admiralty Courts, being Rules of the High Court, — in substitution for 36 & 37 Vict. c. 66. s. 70.

S. 18. "All Rules and Orders of Court in force at the time of the commencement of this Act in the Court of Probate, the Court for Divorce and Matrimonial Causes, and the Admiralty Court, or in relation to appeals from the Chief Judge in Bankruptcy, or from the Court of Appeal in Chancery in bankruptcy matters, except so far as they are expressly varied by the First Schedule hereto or by Rules of Court made by Order in Council before the commencement of this Act, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively until they shall respectively be altered or annulled by any Rules of Court made after the commencement of this Act.

The present Judge of the Probate Court and of the Court for Divorce and Matrimonial Causes, shall retain, and the president for the time being of the Probate and Divorce Division of the High Court of Justice shall have, with regard to non-contentious or common form business in the Probate Court, the powers now conferred on the Judge of the Probate Court by the thirtieth section of the twentieth and twenty-first years of Victoria, chapter seventy-seven, and the said Judge shall retain, and the said president shall have, the powers as to the making of rules and regulations conferred by the fifty-third section of the twentieth and twenty-first years of Victoria, chapter eighty-five."

Criminal procedure, subject to future rules, to remain unaltered.

71. *Subject to any rules of court to be made under and by virtue of this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to Crown Cases Reserved, shall be the same as the practice and procedure in similar causes and matters before the passing of this Act.*

This section is repealed by the Act of 1875, and the following clause substituted :

Provision as to criminal procedure, subject to future rules remaining unaltered, — in substitution for 36 & 37 Vict. c. 66. s. 71.

S. 19. "Subject to the First Schedule hereto and any Rules of Court to be made under this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to Crown Cases Reserved, shall be the same as the practice and procedure in similar causes and matters before the commencement of this Act."

As to the Court for Crown Cases Reserved, see s. 47, *ante*, p. 83.

Act not to affect rules of evidence or juries.

72. *Nothing in this Act or in the schedule hereto, or in any rules of court to be made by virtue hereof, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to juries or juries.*

This section is repealed by the Act of 1875, and the following provision substituted :—

S. 20. "Nothing in this Act or in the First Schedule hereto, or in any Rules of Court to be made under this Act, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries."

As to evidence in general, see orders XXXVII. and XXXVIII., *post*, pp. 264, 266.

As to trials by jury, see s. 56, *ante*, p. 86: Order XXXVI., rules 2, 3, 4, 7, 22, 27, *post*, p. 248, and notes thereto.

73. *Save as by this Act, or by any rules of court (whether contained in the schedule to this Act, or to be made under the authority thereof), is or shall be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is hereby transferred to the said High Court, and to the said Court of Appeal, respectively, under or by virtue of any law, custom, general orders, or rules whatsoever, and which are not inconsistent with this Act or with any rules contained in the said schedule or to be made by virtue of this Act, may continue to be used and practised in the said High Court of Justice, and the said Court of Appeal, respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if this Act had not passed.*

This section is repealed by the Act of 1875, and the following substituted:—

S. 21. "Save as by the principal Act or this Act, or by any Rules of Court, may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is by the principal Act or this Act transferred to the said High Court and to said Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal Act or this Act or with any Rules of Court, may continue to be used and practised, in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if the principal Act and this Act had not passed."

S. 22 expressly reserves to any party upon a trial by jury the right to require the judge to leave the issues to the jury with a proper direction in point of law, and allows this right to be enforced by a proceeding analogous to a Bill of Exceptions. As to this see note to s. 46, *ante*, p. 82.

See note at the head of the schedule of rules, *post*, p. 151; Order LXII., *post*, p. 312.

74. *From and after the commencement of this Act, the Supreme Court may at any time, with the concurrence of a majority of the Judges thereof present at any meeting for that purpose held (of which majority the Lord Chancellor*

S. lxxiii.

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Provision as to Act not affecting rules of evidence or juries,—in substitution for 36 & 37 Vict. c. 66. s. 72.

Saving of existing procedure of Courts when not inconsistent with this Act or Rules.

Provision for saving of existing procedure of courts when not inconsistent with this Act or rules of Court,—in substitution for 36 & 37 Vict. c. 66. s. 73.

Power to make and alter Rules after commencement of Act.

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shall be one), alter or annul any rules of court for the time being in force, or make any new rules of court, for the purpose of regulating all such matters of practice and procedure in the Supreme Court, or relating to the suitors or officers of the said Court, or otherwise, as under the provisions of this Act are or may be regulated by rules of court: Provided, that any rule made in the exercise of this power, whether for altering or annulling any then existing rule, or for any other purpose, shall be laid before both Houses of Parliament, within the same time, and in the same manner and with the same effect in all respects, as is hereinbefore provided with respect to the said rules to be made before the commencement of this Act, and may be annulled and made void in the same manner as such last-mentioned rules.

This section is repealed by the Act of 1875, and new provisions are made for rules. See note to s. 68, *ante*, p. 94.

Councils of Judges to consider procedure and administration of justice.

75. A Council of the Judges of the Supreme Court, of which due notice shall be given to all the said judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord Chief Justice of England, for the purpose of considering the operation of this Act and of the rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and of inquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the said High Court of Justice or the said Court of Appeal, or in any other Court from which any appeal lies to the said High Court or any Judge thereof, or to the said Court of Appeal: And they shall report annually to one of Her Majesty's Principal Secretaries of State what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament it would be expedient to make for the better administration of justice. Any extraordinary council of the said judges may also at any time be convened by the Lord Chancellor.

Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

76. All Acts of Parliament relating to the several Courts and judges, whose jurisdiction is hereby transferred to the said High Court of Justice and the said Court of Appeal respectively, or wherein any of such Courts or judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done

after the commencement of this Act, as if the said High Court of Justice or the said Court of Appeal, and the Judges thereof, respectively, as the case may be, had been named therein instead of such Courts or judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the judge or any judges, or of any number of the judges, of any one or more of the Courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of judges of the said High Court of Justice; and all general and other commissions, issued under the Acts relating to the Central Criminal Court or otherwise, by virtue whereof any judges of any of the Courts whose jurisdiction is so transferred may, at the commencement of this Act, be empowered to try, hear, or determine any causes or matters, criminal or civil, shall remain and be in full force and effect, unless and until they shall respectively be in due course of law revoked or altered.

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PART V.

OFFICERS AND OFFICES.

77. The Queen's Remembrancer, and all Masters, Secretaries, Registrars, Clerks of Records and Writs, Associates, Prothonotaries, Chief and other Clerks, Commissioners to take oaths or affidavits, Messengers, and other officers and assistants at the time of the commencement of this Act attached to any Court or judge whose jurisdiction is hereby transferred to the High Court, or to the Court of Appeal, and also all Registrars, Clerks, Officers, and other persons at the time of the commencement of this Act engaged in the preparation of commissions or writs, or in the registration of judgments or any other ministerial duties in aid of, or connected with, any Court, the jurisdiction of which is hereby transferred to the said Courts respectively, shall, from and after the commencement of this Act, be attached to the Supreme Court, consisting of the said High Court of Justice and the said

Transfer of existing staff of officers to Supreme Court.

S. lxxvii. Court of Appeal: Provided, that all the duties with respect to Appeals from the Court of Chancery of the County Palatine of Lancaster which are now performed by the Clerk of the Council of the Duchy of Lancaster shall be performed by the Registrars, Taxing Masters, and other officers by whom like duties are discharged in the Supreme Court; and the said Clerk of the Council of the Duchy of Lancaster shall not be an officer attached to the said Court.

The officers so attached shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed, and any such officer who is removeable by the Court to which he is now attached, shall be removeable by the Court to which he shall be attached under this Act, or by the majority of the judges thereof.

The existing registrars and clerks to the registrars in the Chancery Registrar's office shall retain any right of succession secured to them by Act of Parliament, so as to entitle them in that office, or in any substituted office, to the succession to appointments with similar or analogous duties, and with equivalent salaries.

The business to be performed in the High Court of Justice and in the Court of Appeal respectively, or in any divisional or other Court thereof, or in the chambers of any judge thereof, other than that performed by the judges, shall be distributed among the several officers attached to the Supreme Court by this section in such manner as may be directed by rules of court; and such officers shall perform such duties in relation to such business as may be directed by rules of court, with this qualification, that the duties required to be performed by any officer shall be the same, or duties analogous to those which he performed previously to the passing of this Act; and, subject to such rules of court, all such officers respectively shall continue to perform the same duties, as nearly as may be, in the same manner as if this Act had not passed.

All secretaries, clerks, and other officers attached to any existing judge who under the provisions of this Act shall become a Judge of the High Court of Justice, or of the Court of Appeal, shall continue attached to such judge, and shall perform the same duties as those which they have hitherto performed, or duties analogous thereto; and all such last-mentioned officers shall have the same rank and hold their offices by the same tenure, and upon the

same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed: Provided that the Lord Chancellor may, with the consent of the Treasury, increase the salary of any existing officer whose duties are increased by reason of the passing of this Act.

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Upon the occurrence of a vacancy in the office of any officer coming within the provisions of this section, the Lord Chancellor, with the concurrence of the Treasury, may, in the event of such office being considered unnecessary, abolish the same, or may reduce the salary, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing judge. Nothing in this Act contained shall interfere with the office of marshal attending any Commissioner of Assize.

This section, it will be observed, leaves the business of the Court, so far as the officers are concerned, to be distributed among the various officers by rule, subject only to certain restrictions. The way in which the matter is dealt with in the schedule of rules is this:—Throughout the rules the various things to be done are merely directed to be done by the proper officer. And in the interpretation clause, Order LXII., “proper officer” is defined as follows:—

“Proper officer” shall, unless and until any rule to the contrary is made, mean an officer to be ascertained as follows:—

- (a.) Where any duty to be discharged under the Act or these rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same.
- (b.) Where any new duty is under the Act or these rules to be discharged, the proper officer to discharge the same shall be such officer, having previously discharged analogous duties, as may from time to time be directed to discharge the same in the case of an officer of the Supreme Court, or the High Court of Justice, or the Court of Appeal, not attached to any division, by the Lord Chancellor, and in the case of an officer attached to any division by the president of the division, and in the case of an officer attached to any judge, by such judge.

By Order LX., Rule 1, *post*, p. 307, the officers attached to the several Courts, consolidated by the Act, are attached to the corresponding Divisions of the High Court. By Rule 2 of the same Order, the officers of each Division are to follow all appeals from the Division to the Court of Appeal.

This clause is amended by s. 34 of the Act of 1875 by the addition of the following provisions:—“Upon the occurrence of any vacancy coming within the provisions of the said section, an appointment shall not be made thereto for the period of one month without the assent of the Lord Chancellor, given with the concurrence of the Treasury; and further, the Lord Chancellor may, with the concurrence of the Treasury, suspend the making any appointment to such office for any period not later than the first day of January one thousand eight hundred and seventy-seven, and may,

S. lxxviii. if it be necessary, make provision in such manner as he thinks fit for the temporary discharge, in the meantime, of the duties of such office.”

Officers of
Courts of
Pleas at
Lancaster
and Durham.

78. The existing Queen's Counsel of the County Palatine of Lancaster shall for the future have the same precedence in the county, and the existing prothonotaries and district prothonotaries, and other officers of the Court of Common Pleas at Lancaster and the Court of Pleas at Durham respectively, and their successors, shall (subject to rules of court) perform the same or the like duties and exercise the same or the like powers and authorities in respect of all causes and matters depending in those Courts respectively at the commencement of this Act, and also in respect of all causes and matters which may afterwards be commenced in the High Court of Justice in the manner heretofore practised in the said Court of Common Pleas at Lancaster and the said Court of Pleas at Durham respectively, as at the commencement of this Act may lawfully be performed and exercised by them respectively under any Acts of Parliament for the time being in force with respect to the said last-mentioned Courts respectively, or under any other authority; and all powers in respect of any such prothonotaries, district prothonotaries, or other officers of the Court of Common Pleas at Lancaster, which at the commencement of this Act may be vested by law in the Chancellor of the Duchy and County Palatine of Lancaster, under any such Act of Parliament or otherwise, and to which the concurrence of any other authority may not be required, shall and may be exercised after the commencement of this Act by the Lord Chancellor; and all the powers of making or publishing any general rules or orders with respect to the powers or duties of such prothonotaries, district prothonotaries, or other officers of the said Court of Common Pleas at Lancaster or the said Court of Pleas at Durham, or with respect to the business of the said Court respectively, or with respect to any fees to be taken therein, or otherwise with reference thereto, which under any such Act as aforesaid or otherwise by law may be vested in the Chancellor of the Duchy and County Palatine of Lancaster, with the concurrence of any judges or judge, or in any other authority, shall be exercised after the commencement of this Act in the manner hereby provided with respect to rules of court to be made under this Act, and (in all cases in which the sanction of the Treasury is now required) with the sanction of the Treasury; and all provisions made by any such Acts as aforesaid, or otherwise for or with respect to the remunera-

tion of any such prothonotaries, district prothonotaries, or other officers as aforesaid, shall remain and be in full force and effect until the same shall be altered under the provisions of this Act, or otherwise by lawful authority.

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As to the Fee Fund of the Courts of Lancaster and Durham, and the salaries of the officers of those Courts, see s. 26 of the Act of 1875. *post*, p. 143.

79. Each of the Judges of the High Court of Justice, and of the ordinary Judges of the Court of Appeal, appointed respectively after the commencement of this Act, and also such of the ordinary judges of the Court of Appeal as have no similar officers at the time of the commencement of this Act, shall have such officers as hereinafter mentioned, who shall be attached to his person as such Judge, and appointed and removeable by him at his pleasure, and who shall respectively receive the salaries hereinafter mentioned (that is to say):

Personal
officers of
future
Judges.

To the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, respectively, there shall be attached a secretary, whose salary shall be five hundred pounds per annum, a principal clerk, whose salary shall be four hundred pounds per annum, and a junior clerk, whose salary shall be two hundred pounds per annum. To each of the other Judges of the High Court of Justice, and to each of the ordinary Judges of the Court of Appeal, there shall be attached a principal clerk, whose salary shall be four hundred pounds per annum, and, in the case of the Judges of the High Court of Justice, a junior clerk, whose salary shall be two hundred pounds per annum.

Such one or more of the officers so attached to each of the said Judges, as such Judge, shall think fit, shall be required, while in attendance on such Judge, to discharge without further remuneration, the duties of crier in Court or on Circuit, or of usher or train bearer. The duties of chamber clerks, so far as relates to business transacted in chambers by Judges appointed after the commencement of this Act, shall be performed by officers of the Court in the permanent civil service of the Crown.

By the Act of 1875, s. 35, "Be it enacted that any person who at the time of the commencement of this Act, shall hold the office of chamber clerk, shall be eligible at any time thereafter for appointment to the like office, anything in the principal Act to the contrary notwithstanding; and that if any such person shall be so appointed after the commencement of this Act, he shall, if the salary assigned to such office by or under the principal Act be less than the salary

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received by him at the time of the commencement of this Act, be entitled to receive a salary not less than that so formerly received by him, so long as he shall retain such office, but shall not be entitled to receive or claim any pension in respect of his service, unless the Treasury, in its absolute discretion, shall think fit to sanction the same."

Provisions as
to officers
paid out of
fees.

80. Any existing officer attached to any existing Court or judge whose jurisdiction is abolished or transferred by this Act, who is paid out of fees, and whose emoluments are affected by the passing of this Act shall be entitled to prefer a claim to the Treasury; and the Treasury, if it shall consider his claim to be established, shall have power to award to him such sum, either by way of compensation, or as an addition to his salary, as it thinks just, having regard to the tenure of office by such officer and to the other circumstances of the case.

Doubts as to
the status of
officers to be
determined
by rule.

81. Where a doubt exists as to the position under this Act of any existing officer attached to any existing Court or judge affected by this Act, such doubt may be determined by rules of court: subject to this proviso, that such rules of court shall not alter the tenure of office, rank, pension (if any), or salary of such officer, or require him to perform any duties other than duties analogous to those which he has already performed.

Powers of
Commissioners to
administer
oaths.

82. Every person who at the commencement of this Act shall be authorized to administer oaths in any of the Courts whose jurisdiction is hereby transferred to the High Court of Justice, shall be a commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal.

A uniform scale of fees to be taken by all commissioners provided by Additional Rules, *post*, p. 409.

Official
Referees to
be ap-
pointed.

83. There shall be attached to the Supreme Court permanent officers to be called official referees, for the trial of such questions as shall under the provisions of this Act be directed to be tried by such referees. The number and the qualifications of the persons to be so appointed from time to time, and the tenure of their offices, shall be determined by the Lord Chancellor, with the concurrence of the presidents of the divisions of the High Court of Justice, or a majority of them (of which majority the Lord Chief Justice of England shall be one), and with the sanction of the Treasury. Such official referees shall perform the duties entrusted to them in

such places, whether in London or in the country, as may from time to time be directed or authorised by any order of the said High Court or of the Court of Appeal ; and all proper and reasonable travelling expenses incurred by them in the discharge of their duties shall be paid by the Treasury out of moneys to be provided by Parliament. S. lxxxiv.

As to the matters which may be referred to the official referees, and the mode of procedure before them, see ss. 56, 57, 58 and 59, *ante*, p. 86 ; Order XXXVI., Rules 30 to 34, *post*, p. 256, and note thereto. As to their salaries see s. 85, *post*, p. 108.

84. Subject to the provisions in this Act contained with respect to existing officers of the Courts whose jurisdiction is hereby transferred to the Supreme Court, there shall be attached to the Supreme Court such officers as the Lord Chancellor, with the concurrence of the presidents of the divisions of the High Court of Justice, or the major part of them, of which majority the Lord Chief Justice of England shall be one, and with the sanction of the Treasury, may from time to time determine. Duties, appointment, and removal of officers of Supreme Court.

Such of the said several officers respectively as may be thought necessary or proper for the performance of any special duties, with respect either to the Supreme Court generally, or with respect to the High Court of Justice or the Court of Appeal, or with respect to any one of the divisions of the said High Court, or with respect to any particular judge or judges of either of the said Courts, may by the same authority, and with the like sanction as aforesaid, be attached to the said respective Courts, divisions, and judges accordingly.

All officers assigned to perform duties with respect to the Supreme Court generally, or attached to the High Court of Justice or the Court of Appeal, and all commissioners to take oaths or affidavits in the Supreme Court, shall be appointed by the Lord Chancellor.

All officers attached to the Chancery Division of the said High Court, who have been heretofore appointed by the Master of the Rolls, shall continue, while so attached, to be appointed by the Master of the Rolls.

All other officers attached to any division of the said High Court shall be appointed by the president of that division.

All officers attached to any judge shall be appointed by the judge to whom they are attached.

Any officer of the Supreme Court (other than such officers attached to the person of a judge as are hereinbefore declared to be removeable by him at his pleasure)

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may be removed by the person having the right of appointment to the office held by him, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

The authority of the Supreme Court over all or any of its officers may be exercised in and by the said High Court and the said Court of Appeal respectively, and also in the case of officers attached to any division of the High Court by the president of such division, with respect to any duties to be discharged by them respectively.

Salaries and
pensions of
officers.

85. There shall be paid to every official referee and other salaried officer appointed in pursuance of this Act such salary out of moneys to be provided by Parliament as may be determined by the Treasury with the concurrence of the Lord Chancellor.

An officer attached to the person of a judge shall not be entitled to any pension or compensation in respect of his retirement from or the abolition of his office, except so far as he may be entitled thereto independently of this Act; but every other officer to be hereafter appointed in pursuance of this part of this Act, and whose whole time shall be devoted to the duties of his office, shall be deemed to be employed in the permanent Civil Service of Her Majesty, and shall be entitled, as such, to a pension or compensation in the same manner, and upon the same terms and conditions, as the other permanent civil servants of Her Majesty are entitled to pension or compensation.

Patronage
not other-
wise pro-
vided for.

86. Subject to the provisions hereinbefore contained, any rights of patronage and other rights or powers incident to any Court, or to the office of any judge of any Court whose jurisdiction is transferred to the said High Court of Justice, or to the said Court of Appeal, in respect of which rights of patronage or other rights or powers no provision is or shall be otherwise made by or under the authority of this Act, shall be exercised as follows, that is to say: if incident to the office of any existing judge shall continue to be exercised by such existing judge during his continuance in office as a judge of the said High Court or of the Court of Appeal, and after the death, resignation, or removal from office of such existing judge shall be exercised in such manner as Her Majesty may by Sign Manual direct.

Solicitors
and attor-
neys.

87. From and after the commencement of this Act all persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any Court, the jurisdiction

of which is hereby transferred to the High Court of Justice or the Court of Appeal, shall be called solicitors of the Supreme Court, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed; and all persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such Courts, shall be entitled to be admitted and to be called solicitors of the Supreme Court, and shall be admitted by the Master of the Rolls, and shall, as far as circumstances will permit, be entitled as such solicitors to the same privileges, and be subject to the same obligations as if this Act had not passed.

S. lxxxviii.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be officers of the Supreme Court; and that court, and the High Court of Justice, and the Court of Appeal respectively, or any division or judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of Her Majesty's superior courts of law or equity might previously to the passing of this Act have exercised in respect of any solicitor or attorney admitted to practice therein.

Section 14 of the Act of 1875, *post*, p. 134 enacts, with reference to this section, as follows:—

S. 14. "Whereas under s. 87 of the principal Act, solicitors and attorneys will, after the commencement of that Act, be called solicitors of the Supreme Court: Be it therefore enacted that—

Amendment
of 36 & 37
Vict. c. 66. s.
87, as to
enactments
relating to
attorneys.

The registrar of attorneys and solicitors in England shall be called the Registrar of Solicitors, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron, or any two of them, may, from time to time, by regulation adapt any enactments relating to attorneys, and any declaration, certificate, or form required under those enactments to the solicitors of the Supreme Court under s. 87 of the principal Act."

PART VI.

JURISDICTION OF INFERIOR COURTS.

88. It shall be lawful for Her Majesty from time to time by Order in Council to confer on any inferior Court of civil jurisdiction, the same jurisdiction in equity and in admiralty respectively, as any County Court now has, or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this Act directed.

Power by
Order in
Council to
confer juris-
diction on
inferior
Courts.

S. lxxxix.
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 Powers of
 inferior
 Courts
 having
 Equity and
 Admiralty
 jurisdiction.

89. Every inferior Court which now has or which may after the passing of this Act have jurisdiction in equity, or at law and in equity, and in admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such Court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice.

See s. 24, *ante*, p. 57, and notes thereto.

Counter-
 claims in
 inferior
 Courts, and
 transfers
 therefrom.

90. Where in any proceeding before any such inferior Court any defence or counter claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter claim shall not effect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter claim: Provided always, that in such case it shall be lawful for the High Court, or any division or judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior Court to the High Court, or to any division thereof; and in such case the record in such proceeding shall be transmitted by the registrar, or other proper office, of the inferior Court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein.

Rules of law
 to apply to
 inferior
 Courts.

91. The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognizable by such Courts.

See s. 25, *ante*, p. 61, and notes thereto.

PART VII.

MISCELLANEOUS PROVISIONS.

92. All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court.

Transfer of books and papers to Supreme Court.

93. This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the judges or the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any judges going circuit, or the position, salaries, or duties of any officers transferred to the Supreme Court who are now officers of the Superior Courts of Common Law, and who perform duties in relation to either the civil or criminal business transacted on circuit.

Saving as to circuits, &c.

By s. 23 of the Act of 1875, *post*, p. 138, power is given to the Queen in Council to alter the existing circuits and make the necessary changes incidental thereto.

As to the jurisdiction of judges and commissioners on circuit, see ss. 26, 29, 37, *ante*, pp. 68, 69, 77, and notes thereto.

As to the Counties Palatine, see s. 99, *post*, p. 112.

94. This Act, except so far as herein is expressly directed, shall not affect the office or position of Lord Chancellor; and the officers of the Lord Chancellor shall continue attached to him in the same manner as if this Act had not passed; and all duties, which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Supreme Court, and by his successors.

Saving as to Lord Chancellor.

S. xciv.
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Saving as to
Chancellor
of Lancaster.

95. This Act, except so far as is herein expressly directed, shall not affect the offices, position, or functions of the Chancellor of the County Palatine of Lancaster.

The Court of the Chancellor of the Duchy of Lancaster is not affected by the Act; s. 16, *ante*, p. 51, and note thereto. But appeals from that Court will be to the Court of Appeal; s. 18, *ante*, p. 53. By s. 77, *ante*, p. 101, the Clerk to the Council of the Duchy is not to be an officer of the Supreme Court; his duties in respect of appeals are to be discharged by the officers of the Court. All power over officers of the Court of Common Pleas of Lancaster hitherto exercised by the Chancellor of the Duchy is transferred to the Lord Chancellor, s. 78, *ante*, p. 103. And the power of making rules to bind them, to the same body by which rules for the Supreme Court may be framed, *Ibid*.

Saving as to
Chancellor
of the Ex-
chequer
and sheriffs.

96. The Chancellor of the Exchequer shall not be a Judge of the High Court of Justice, or of the Court of Appeal, and shall cease to exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; but save as aforesaid he shall remain in the same position as to duties and salary, and other incidents of his office, as if this Act had not passed. The same order and course with respect to the appointment of sheriffs shall be used and observed in the Exchequer Division of the said High Court as has been heretofore used and observed in the Court of Exchequer.

Saving as to
Lord
Treasurer
and office of
Receipt
of Ex-
chequer.

97. Nothing in this Act contained shall affect the office of Lord Treasurer, except that any Lord Treasurer shall not hereafter exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; and nothing in this Act shall affect the office of the Receipt of the Exchequer.

Provision
as to Great
Seal being in
commission.

98. When the great seal is in commission, the Lords Commissioners shall represent the Lord Chancellor for the purposes of this Act, save that as to the Presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this Act may be exercised by the Senior Lord Commissioner for the time being.

Provision as
to Com-
missions in
Counties
Palatine.

99. From and after the commencement of this Act, the Counties Palatine of Lancaster and Durham shall respectively cease to be Counties Palatine, so far as respects the issue of Commissions of Assize, or other like Commissions,

but not further or otherwise ; and all such Commissions may be issued for the trial of all causes and matters within such counties respectively in the same manner in all respects as in any other counties of England and Wales. S. c.
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100. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following (that is to say) : Interpreta-
tion of terms.

- “ Lord Chancellor ” shall include Lord Keeper of the Great Seal.
- “ The High Court of Chancery ” shall include the Lord Chancellor.
- “ The Court of Appeal in Chancery ” shall include the Lord Chancellor as a Judge on rehearing or appeal.
- “ London Court of Bankruptcy ” shall include the Chief Judge in Bankruptcy.
- “ The Treasury ” shall mean the Commissioners of Her Majesty’s Treasury for the time being, or any two of them.
- “ Rules of Court ” shall include forms.
- “ Cause ” shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.
- “ Suit ” shall include action.
- “ Action ” shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of court ; and shall not include a criminal proceeding by the Crown.
- “ Plaintiff ” shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.
- “ Petitioner ” shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.
- “ Defendant ” shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.
- “ Party ” shall include every person served with notice of, or attending any proceeding, although not named on the record.
- “ Matter ” shall include every proceeding in the Court not in a cause.

- S. c.
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- “ Pleading ” shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter claim of a defendant.
- “ Judgment ” shall include decree.
- “ Order ” shall include rule.
- “ Oath ” shall include solemn affirmation and statutory declaration.
- “ Crown Cases Reserved ” shall mean such questions of law reserved in criminal trials as are mentioned in the Act of the eleventh and twelfth years of Her Majesty’s reign, chapter seventy-eight.
- “ Pension ” shall include retirement and superannuation allowance.
- “ Existing ” shall mean existing at the time appointed for the commencement of this Act.

SCHEDULE.*

RULES OF PROCEDURE.

Form of Action.

Form of
action in
High Court.

1. All actions which have hitherto been commenced by writ in the Superior Courts of Common Law at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Pleas at Durham, and all suits which have hitherto been commenced by bill or information in the High Court of Chancery, or by a cause in rem or in personam in the High Court of Admiralty, or by citation or otherwise in the Court of Probate, shall be instituted in the High Court of Justice by a proceeding to be called an action.

All other proceedings in and applications to the High Court may, subject to rules of Court, be taken and made in the same manner as they would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if this Act had not passed.

Writ of Summons.

Actions to be
commenced
by writ.

2. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the division of the High Court to which it is intended that the action should be assigned.

* The whole of this Schedule is repealed by the Act of 1875. The rules contained in it, are incorporated almost, but not quite, in every instance verbatim in the Schedule of rules appended to that Act, *post*, p. 151.

3. Forms of writs and of indorsements thereon, applicable to the several ordinary causes of action, shall be prescribed by Rules of Court, and any costs incurred by the use of any more prolix or other forms shall be borne by the party using the same, unless the Court shall otherwise direct.

Form of writ.

4. No service of writ shall be required when the defendant, by his solicitor, agrees to accept service, and enters an appearance.

Acceptance of service.

5. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or to a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service, as may seem just.

Service of writ.

6. Whenever it appears fit to the Court or to a Judge in a case in which the cause of action has arisen within the jurisdiction, or is properly cognizable against a defendant within the jurisdiction, that any person out of the jurisdiction of the Court shall be served with the writ or other process of the Court, the Court or Judge may order such service, or such notice in lieu of service, to be made or given in such manner and on such terms as may seem just.

Service out of the jurisdiction.

7. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money, payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, or on a trust, the writ of summons may be specially indorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set off.

Special indorsement of particulars of debts or liquidated demands.

See C. L. P. Act, 1852, ss. 25, 27.

In case of non-appearance by the defendant where the writ of summons is so specially indorsed, the plaintiff may sign final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, but it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just.

Where the defendant appears on a writ of summons so specially indorsed, the plaintiff may, on affidavit verifying the cause of action, and swearing that in his belief there is no defence to the action, call on the defendant to show cause before the Court or a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs; and the Court or Judge may, unless the defendant, by affidavit or otherwise, satisfy the Court or Judge that he has a good defence to the action on the merits, or disclose such facts as the Court or Judge may think sufficient to entitle him to be permitted to defend the action, make an order empowering the plaintiff to sign judgment accordingly. Permission to defend the action may be granted to the defendant on such terms and conditions, if any, as the Judge or Court may think just.

Special indorsement of a partnership or executorship or ordinary trust account, where the particulars in plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

In default of appearance on such summons, and after appearance, unless the defendant, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made.

Parties.

Mis-joinder or non-joinder of parties.

9. No action shall be defeated by reason of the misjoinder of parties, and the Court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, in the manner prescribed by Rules of Court, and on such terms as may appear to the Court or a Judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined be struck out, and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto. All parties whose names are so added as defendants shall be served with a summons or notice in such manner as may be prescribed by Rules of Court or by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice.

Representation of parties having same interest.

10. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorised by the Court to defend in such action, on behalf or for the benefit of all parties so interested.

11. Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of their respective firms, if any; and any party to an action may in such case apply by summons to a Judge in Chambers for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct.

Power to determine questions as against third parties.

12. Where a defendant is or claims to be entitled to contribution or indemnity, or any other remedy or relief over against any other person, or where from an other cause it appears to the Court or a Judge that a question in the action should be determined not only as between the plaintiff and defendant, but as between the plaintiff, defendant, and any other person, or between any or either of them, the Court or a Judge may on notice being given to such last-mentioned person, in such manner and form as may be prescribed by Rules of Court, make such order as may be proper for having the question so determined.

13. Where in any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as may be prescribed by Rules of Court, or by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent may be determined as between all parties to the action.

Provision for case of doubt as to proper parties.

14. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the Court or a Judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto.

Trustees, executors, &c.

15. Married women and infants may respectively sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of this Act; and infants may, in like manner, defend any action by their guardians appointed for that purpose. Married women may also, by the leave of the Court or a Judge, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the Court or a Judge may require.

Actions by married women and infants.

16. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

Parties where there are several liabilities on the same contract.

17. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue and shall not become defective by the assignment, creation, or devolution of any estate or title pendente lite.

Abatement.

In case of marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to an action, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as may be prescribed by Rules of Court, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the action as may be just.

In case of an assignment, creation, or devolution of any estate or title pendente lite, the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

Pleadings.

18. The following rules of pleading shall be substituted for those heretofore used in the High Court of Chancery and in the Courts of Common Law, Admiralty, and Probate.

Form of pleadings.

Unless the defendant at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall within such time and in such manner as shall be prescribed by Rules of Court, file and deliver to the defendant after his appearance a printed statement of his complaint and of the

relief or remedy to which he claims to be entitled. The defendant shall within such time and in such manner as aforesaid file and deliver to the plaintiff a printed statement of his defence, set-off, or counter-claim (if any) and the plaintiff shall in like manner file and deliver a printed statement of his reply (if any) to such defence, set-off, or counter-claim. Such statements shall be as brief as the nature of the case will admit, and the Court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

A demurrer to any statement may be filed in such manner and form as may be prescribed by Rules of Court.

The Court or a Judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties.

Power to settle issues.

19. Where in any action it appears to a Judge that the statement of claim or defence or reply does not sufficiently disclose the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the Judge.

Counter-claims by defendant.

20. A defendant may set off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

Power to judgment for defendant for balance under counter-claim.

21. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

Joinder of several causes of action.

22. Subject to any Rules of Court, the plaintiff may unite in the same action and in the same statement of claim several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

23. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest.

24. If it appear to the Court or a Judge, either from the statement of claim or defence or reply or otherwise, that there is in any action a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a Referee or an Arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, or as may be prescribed by Rules of Court, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

Power for Court to raise preliminary questions of law in an action.

Discovery.

25. Subject to any Rules of Court, a plaintiff in any action shall be entitled to exhibit interrogatories to, and obtain Discovery from, any defendant, and any defendant shall be entitled to exhibit interrogatories to, and obtain Discovery from, a plaintiff or any other party. Any party shall be entitled to object to any interrogatory on the ground of irrelevancy, and the Court or a Judge, if not satisfied that such interrogatory is relevant to some issue in the cause, may allow such objection. No exceptions shall be taken to any answer, but the sufficiency or otherwise of any answer objected to as insufficient shall be determined by the Court or a Judge in a summary way.

Right of discovery on interrogatories.

The Court in adjusting the costs of the action shall at the instance of any party inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing master or of the Court or Judge that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

26. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice.

Production of documents pleaded or proved.

27. It shall be lawful for the Court or a Judge at any time during the pendency therein of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit or proceeding, as the Court or Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Discovery as to documents.

Place of Trial.

28. There shall be no local venue for the trial of any action, but when the plaintiff proposes to have the action tried elsewhere than

Place of trial.

in Middlesex, he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action shall, unless a Judge otherwise orders, be tried in the county or place so named. Where no place of trial is named in the statement of claim, the place of trial shall, unless a Judge otherwise orders, be the county of Middlesex. Any order of a Judge, as to such place of trial, may be discharged or varied by a Divisional Court of the High Court.

List for trials in London and Middlesex. 29. The list or lists of actions for trial at the sittings in London and Middlesex respectively shall be prepared and the actions shall be allotted for trial in such manner as may be prescribed by Rules of Court, without reference to the division of the High Court to which such actions may be attached.

Mode of Trial.

Mode of trying actions. 30. Actions shall be tried and heard either before a Judge or Judges, or before a Judge sitting with assessors, or before a Judge and Jury, or before an official or special Referee, with or without assessors.

Notice of mode of trial to be given. 31. The plaintiff may give notice of trial by any of the modes aforesaid, but the defendant may, upon giving notice, within such time as may be fixed by Rules of Court, that he desires to have any issues of fact tried before a Judge and Jury, be entitled to have the same so tried, or he may apply to the Court or a Judge for an order to have the action tried in any other of the said ways, and in such case the mode in which the action is to be tried or heard shall be determined by such Court or Judge.

Different questions arising in same action may be tried in different ways. 32. In any action the Court or a Judge may, at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials.

Trials by jury. 33. Every trial of any question or issue of fact by a Jury shall be held before a single Judge, unless such trial be specially ordered to be held before two or more Judges.

Proceedings before an official Referee. 34. Where an action or matter, or any question in an action or matter, is referred to a Referee, he may, subject to the order of the Court or a Judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial in open Court, *de die in diem*, in a similar manner as in actions tried by a jury.

Effect of decision of Referee. 35. The Referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and

the Court shall have power to require any explanation or reasons from the Referee, and to remit the action or any part thereof for re-trial or further consideration to the same or any other Referee.

Evidence.

36. In the absence of any agreement between the parties, and subject to any Rules of Court applicable to any particular class of cases, the witnesses at the trial of any cause, or at any assessment of damages, shall be examined *vivâ voce* and in open court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a Commissioner or examiner; provided that where it appears to the Court or Judge that the other party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Mode of giving evidence at trials.

37. Upon any interlocutory application evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

Evidence at interlocutory applications.

38. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

Matter of affidavits.

39. Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the statement of claim, defence, or reply of any other party.

Admissions.

Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

Interlocutory Orders and Directions.

40. Any party to an action may at any stage thereof apply to the Court or a Judge for such order as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties.

Power for party to apply for order before termination of action.

41. The Lord Chancellor, with the concurrence of the Lord Chief Justice of England, may order any question of law or of fact which may arise in any action or matter to be transferred from any judge to any other Judge, or to be tried or heard by any other Judge

Power to transfer question arising in actions.

of the said High Court, and may confer on such Judge power to deal with the whole or any part of the matters in controversy.

Accounts and inquiries.

42. The Court or a Judge may, at any stage of the proceedings in an action or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special matter to be tried, as to which it may be proper that the cause should proceed in the ordinary manner.

Interim orders as to subject-matter of litigation.

43. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

Power to make orders for sale of goods.

44. It shall be lawful for the Court or a Judge, on the application of any party to any action, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as to the Court or Judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which, for any other just and sufficient reason, it may be desirable to have sold at once.

Power for Court to make interim orders as to preservation or examination of property, examination of witnesses, &c.

45. It shall be lawful for the Court or a Judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property, being the subject of such action, and for all or any of the purposes aforesaid to authorize any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or any of the purposes aforesaid to authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence. The Court or a Judge may also, in all cases where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons, and at any place, of any witness or person, and may order any deposition so taken to be filed in the court, and may empower any party to any action or other proceeding to give such deposition in evidence therein on such terms, if any, as the Court or a Judge may direct.

Discontinuance of action.

46. The plaintiff may, at any time before the receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn. Such costs shall be taxed in the manner prescribed by Rules of Court, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this Rule otherwise provided, it shall not be competent for the plaintiff to withdraw the Record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may, before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of com-

plaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof without such leave. Any judgment of nonsuit, unless the Court or a Judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in any case of mistake, surprise, or accident, any judgment of nonsuit may be set aside on such terms, as to payment of costs and otherwise, as to the Court or a Judge shall seem just.

Costs.

47. Subject to the provisions of this Act, the costs of and incident to all proceedings in the High Court shall be in the discretion of the Court; but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity.

New Trials and Appeals.

48. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only.

49. Bills of exceptions and proceedings in error shall be abolished.

50. All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

51. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as to the Court of Appeal may seem fit.

52. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters

which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a decree or judgment upon the merits, at the trial or hearing of any section or matter, such further evidence (save as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to give any judgment and make any decree or order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

Regulations as to cross appeals.

53. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied or altered, he shall, within such time as may be prescribed by Rules of Court or by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers by this Act conferred upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

Mode of bringing evidence before Court of Appeal.

54. When any question of fact is involved in an appeal, the evidence taken in the Court below shall be brought before the Court of Appeal in such manner as may be prescribed by Rules of Court or by special order.

Power for Court to refer to notes, &c.

55. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the Judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

Want of appeal from interlocutory order not to limit powers of Court of Appeal.

56. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may seem just.

Limit of time in appeals.

57. No appeal from any interlocutory order shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal, or from such time as may be prescribed by Rules of Court. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be prescribed by Rules of Court, or directed under special circumstances by the Court of Appeal.

Appeal not to stay proceedings.

58. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any Judge thereof, or the Court of Appeal, may so order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

SUPREME COURT OF JUDICATURE
(COMMENCEMENT) ACT, 1874.

37 & 38 VICT. c. 83.

—o—

An Act for delaying the coming into operation of the Supreme Court of Judicature Act, 1873.
[7th August, 1874.]

WHEREAS it is expedient to extend the time appointed for the commencement of the Supreme Court of Judicature Act, 1873 :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The second section of the Supreme Court of Judicature Act, 1873, is hereby repealed. Repeal of 36 & 37 Vict., c. 66, s. 2.

2. The Supreme Court of Judicature Act, 1873, except any provisions thereof directed to take effect on the passing of the said Act, shall commence and come into operation on the first day of November one thousand eight hundred and seventy-five, and the said first day of November one thousand eight hundred and seventy-five, shall be taken to be the time appointed for the commencement of the said Act. Commencement of Supreme Court of Judicature Act, 1873.

3. This Act may be cited for all purposes as the Supreme Court of Judicature (Commencement) Act, 1874. Short title of Act.

SUPREME COURT OF JUDICATURE ACT, 1875.

38 & 39 VICT. c. 77.

—o—

A.D. 1875. An Act to amend and extend the Supreme Court of
S. i. Judicature Act, 1873.

[11th August, 1875.]

WHEREAS it is expedient to amend and extend the Supreme Court of Judicature Act, 1873 :

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Short title,
and con-
struction
with 36 & 37
Vict. c. 66.

1. This Act shall so far as is consistent with the tenor thereof be construed as one with the Supreme Court of Judicature Act, 1873 (in this Act referred to as the principal Act), and together with the principal Act may be cited as the Supreme Court of Judicature Acts, 1873 and 1875, and this Act may be cited separately as the Supreme Court of Judicature Act, 1875.

Commence-
ment of Act.

2. This Act, except any provision thereof which is declared to take effect before the commencement of this Act, shall commence and come into operation on the 1st day of November, 1875.

Sections 20, 21, and 55 of the principal Act shall not commence or come into operation until the 1st day of November, 1876, and until the said sections come into operation, an appeal may be brought to the House of Lords from any judgment or order of the Court of Appeal hereinafter mentioned in any case in which any appeal or error might now be brought to the House of Lords or to Her Majesty in Council from a similar judgment, decree, or order of any Court or Judge whose jurisdiction is by the principal Act transferred to the High Court of Justice or the Court of Appeal, or in any case in which leave to appeal shall be given by the Court of Appeal.

The sections whose operation is postponed would take away all second appeals from the High Court or Court of Appeal to the House of Lords or Privy Council ; and would authorize the transfer by Order in Council of all other Privy Council appeals to the Court of Appeal.

S. iii.

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3. Whereas by s. 5 of the principal Act it is provided as follows : “that if at the commencement of this Act the number of puisne justices and junior barons who shall become Judges of the said High Court shall exceed twelve in the whole, no new Judge of the said High Court shall be appointed in the place of any such puisne justice or junior baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of Judges of the said High Court shall not exceed twenty-one;” and whereas, having regard to the state of business in the several Courts whose jurisdiction is transferred by the principal Act to the High Court of Justice, it is expedient that the number of Judges thereof should not at present be reduced : Be it enacted, that so much of the said section as is hereinbefore recited shall be repealed.

Explanation
of 36 & 37
Vict. c. 66,
s. 5, as to
number of
judges.

The Lord Chancellor shall not be deemed to be a permanent Judge of that Court, and the provisions of the said section relating to the appointment and style of the Judges of the said High Court shall not apply to the Lord Chancellor.

4. Her Majesty’s Court of Appeal, in this Act and in the principal Act referred to as the Court of Appeal, shall be constituted as follows : There shall be five ex-officio Judges thereof, and also so many ordinary Judges, not exceeding three at any one time, as Her Majesty shall from time to time appoint.

Constitution
of Court of
Appeal.

The ex-officio Judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer.

The first ordinary Judges of the said Court shall be the present Lords Justices of Appeal in Chancery, and such one other person as Her Majesty may be pleased to appoint by Letters Patent. Such appointment may be made either before or after the commencement of this Act, but if made before shall take effect at the commencement of the Act.

The ordinary Judges of the Court of Appeal shall be styled Justices of Appeal.

s. v.

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The Lord Chancellor may by writing, addressed to the President of any one or more of the following divisions of the High Court of Justice, that is to say, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Division, request the attendance at any time, except during the times of the spring or summer circuits, of an additional Judge from such division or divisions (not being an ex-officio Judge or Judges of the Court of Appeal,) and a Judge, to be selected by the division from which his attendance is requested, shall attend accordingly.

Every additional Judge during the time that he attends the sittings of Her Majesty's Court of Appeal, shall have all the jurisdiction and powers of a Judge of the said Court of Appeal, but he shall not otherwise be deemed to be a Judge of the said Court, or to have ceased to be a Judge of the division of the High Court of Justice to which he belongs.

Section 54 of the principal Act is hereby repealed, and instead thereof the following enactment shall take effect: No Judge of the said Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made by himself, or made by any Divisional Court of the High Court of which he was and is a member.

Whenever the office of an ordinary Judge of the Court of Appeal becomes vacant a new Judge may be appointed thereto by Her Majesty by Letters Patent.

As to the jurisdiction of the Court of Appeal, see s. 19 of the principal Act, *ante*, p. 54, and note thereto. As to the practice on appeals, see Order LVIII., *post*, p. 301, and notes thereto.

The words "was and is" in the above proviso, contrasted with the words "was" in the repealed section rather seem to show that "Divisional Court" means Division.

Tenure of office of Judges, and oaths of office. Judges not to sit in the House of Commons.

5. All the Judges of the High Court of Justice, and of the Court of Appeal respectively, with the exception of the Lord Chancellor, shall hold their offices as such Judges respectively during good behaviour, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every person appointed after the passing of this Act to be Judge of either of the said Courts (other than the Lord Chancellor) when he enters on the execution of his office, shall take in the presence of the Lord Chancellor,

the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

S. vi.
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Precedence
of Judges.

6. The Lord Chancellor shall be President of the Court of Appeal; the other ex officio Judges of the Court of Appeal shall rank in the order of their present respective official precedence. The ordinary Judges of the Court of Appeal, if not entitled to precedence as Peers or Privy Councillors, shall rank according to the priority of their respective appointments as such Judges.

The Judges of the High Court of Justice who are not also Judges of the Court of Appeal shall rank next after the Judges of the Court of Appeal, and, among themselves (subject to the provisions in the principal Act contained as to the existing Judges), according to the priority of their respective appointments.

7. Any jurisdiction usually vested in the Lords Justices of Appeal in Chancery, or either of them, in relation to the persons and estates of idiots, lunatics, and persons of unsound mind, shall be exercised by such Judge or Judges of the High Court of Justice or Court of Appeal as may be intrusted by the sign manual of Her Majesty or Her successors with the care and commitment of the custody of such persons and estates; and all enactments referring to the lords justices as so intrusted shall be construed as if such Judge or Judges so intrusted had been named therein instead of such Lords Justices: Provided that each of the persons who may at the commencement of the principal Act be Lords Justices of Appeal in Chancery shall, during such time as he continues to be a Judge of the Court of Appeal, and is intrusted as aforesaid, retain the jurisdiction vested in him in relation to such persons and estates as aforesaid.

Jurisdiction
of Lords
Justices in
respect of
lunatics.

8. Whereas by s. 11 of the principal Act it is provided as follows: "Every existing Judge who is by this Act made a Judge of the High Court of Justice or an ordinary Judge of the Court of Appeal shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parlia-

Admiralty
judges and
registrar.

S. viii.

ment, law, or custom if this Act had not passed. No Judge appointed before the passing of this Act shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery, unless he was so liable by usage or custom at the commencement of this Act."

And whereas the Judge of the High Court of Admiralty is by the principal Act appointed a Judge of the High Court of Justice:

And whereas such Judge is, as to salary and pension, inferior in position to the other puisne judges of the superior courts of common law, but holds certain ecclesiastical and other offices in addition to the office of Judge of the High Court of Admiralty:

And whereas it is expedient that such Judge, if he be willing to relinquish such other offices, should be placed in the same position as to rank, salary, and pension, as the other puisne Judges of the superior courts of common law:

Be it enacted that—

If the existing Judge of the High Court of Admiralty under his hand signifies to the Lord Chancellor in writing, before the commencement of the principal Act, that he is willing to relinquish such other offices as aforesaid, and does before the commencement of the principal Act, resign all other offices of emolument held by him except the office of Judge of the High Court of Admiralty, he shall, from and after the commencement of the principal Act, be entitled to the same rank, salary, and pension as if he had been appointed a Judge of the High Court of Justice immediately on the commencement of the principal Act, with this addition, that in reckoning service for the purposes of his pension, his service as a Judge of the High Court of Admiralty shall be reckoned in the same manner as if the High Court of Justice had been established at the time of his accepting the office of Judge of the High Court of Admiralty, and he had continued from such time to be a Judge of the said High Court of Justice.

The present holder of the office of registrar of Her Majesty in Ecclesiastical and Admiralty causes, shall, as respects any appeals in which he would otherwise be concerned coming within the cognizance of the Court of Appeal, be deemed to be an officer attached to the Supreme Court; and the office, so far as respects the duties in relation to such appeals as aforesaid, shall be deemed to be a separate office within the meaning of section seventy-seven of the principal Act, and may be dealt with accordingly. He shall be entitled, in so

far as he sustains any loss of emoluments by or in consequence of the principal Act or this Act, to prefer a claim to the Treasury in the same manner as an officer paid out of fees whose emoluments are affected by the passing of the principal Act is entitled to do under s. 80 of the principal Act.

S. ix.

Subject as aforesaid, the person who is at the time of the passing of this Act Registrar of Her Majesty in Ecclesiastical and Admiralty causes shall, notwithstanding anything in the principal Act or this Act, have the same rank and hold his office upon the same tenure and upon the same terms and conditions as heretofore; but it shall be lawful for her Majesty by Order in Council made upon the recommendation of the Lord Chancellor, with the concurrence of the Treasury, to make, notwithstanding anything contained in any Act of Parliament, such arrangements with respect to the duties of the said last-mentioned office, either by abolition thereof or otherwise, as to Her Majesty may seem expedient: Provided that such Order shall not take effect during the continuance in such office of the said person so being registrar at the time of the passing of this Act without his assent.

Every Judge of the Probate, Divorce, and Admiralty Division of the said High Court of Justice appointed after the passing of this Act shall, so far as the state of business in the said division will admit, share with the judges mentioned in s. 37 of the principal Act the duty of holding sittings for trials by jury in London and Middlesex, and sittings under commissions of assize, oyer and terminer, and gaol delivery.

See *ante*, p. 47.

9. The London Court of Bankruptcy shall not be united or consolidated with the Supreme Court of Judicature, and the jurisdiction of that Court shall not be transferred under the principal Act to the High Court of Justice, but shall continue the same in all respects as if such transfer had not been made by the principal Act, and the principal Act shall be construed as if such union, consolidation, and transfer had not been made: Provided that—

London
Court of
Bankruptcy
not to be
transferred
to High
Court of
Justice.

104. D. 537

- (1.) The office of Chief Judge in Bankruptcy shall be filled by such one of the Judges of the High Court of Justice appointed since the passing of the Bankruptcy Act, 1869, or with his consent, of such one of the judges appointed prior to the passing of the last-mentioned Act, as may be appointed by the Lord Chancellor to that office; and

S. x.

(2.) The appeal from the London Court of Bankruptcy shall lie to the Court of Appeal, in accordance with the principal Act.

See *ante*, p. 42.

Amendment
of 36 & 37
Vict. c. 66,
s. 25, as to
rules of law
upon certain
points.

10. Whereas, by s. 25 of the principal Act, after reciting that it is expedient to amend and declare the law to be thereafter administered in England as to the matters next hereinafter mentioned, certain enactments are made with respect to the law, and it is expedient to amend the said section : Be it therefore enacted as follows :—

Sub-section one of clause twenty-five of the principal Act is hereby repealed, and instead thereof the following enactment shall take effect ; (that is to say), in the administration by the Court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the Law of Bankruptcy with respect to the estates of persons adjudged bankrupt ; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

In sub-section 7 of the said section the reference to the date of the passing of the principal Act shall be deemed to refer to the date of the commencement of the principal Act.

The sub-section of the principal Act now repealed assimilated the Chancery rule as to the rights of secured creditors in case of insolvency to that in force in Bankruptcy ; but it left the rule in winding up, which was the same as the Chancery rule, unaffected. The new rule places all the cases upon the same footing. See note to s. 25, sub-s. 1, of the principal Act, *ante*, p. 61.

Provision as
to option for
any Plaintiff
(subject to
rules) to
choose in

11. Subject to any Rules of Court and to the provisions of the principal Act and this Act and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign

such cause or matter to one of the divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such division, and giving notice thereof to the proper officer of the court: Provided, that—

S. xii.
—
what division he will sue,—in substitution for 36 & 37 Vict. c. 66, s. 35.

- (1.) All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any Rules of Court and to the power of transfer) in the division of the said High Court to which such case or matter is for the time being attached; and
- (2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any division of the said High Court to which, according to the Rules of Court or the provisions of the principal Act or this Act, the same ought not to be assigned, the Court, or any Judge of such division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner or by any other party in any such cause or matter, and all orders made therein by the Court or any Judge thereof before any such transfer shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper division of the said Court to which such cause or matter ought to have been assigned; and
- (3.) Subject to Rules of Court, a person commencing any cause or matter shall not assign the same to the Probate, Divorce, and Admiralty Division unless he would have been entitled to commence the same in the Court of Probate, or in the Court for Divorce and Matrimonial causes, or in the High Court of Admiralty if this Act had not passed.

See *ante*, p. 75, and Order V., Rule 4, *post*, p. 170.

12. Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three Judges of

Sittings of Court of Appeal.

S. xiii.

Ch. D. 41

the said Court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two Judges of the said Court sitting together.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Subject to the provisions contained in this section the Court of Appeal may sit in two divisions at the same time.

As to the jurisdiction of the Court of Appeal, see s. 19 of the principal Act, *ante*, p. 54, and note thereto, and as to the practice upon appeals see Order LVIII., *post*, p. 301, and notes thereto.

Amendment
of s. 60 of
36 & 37 Vict.
c. 66 as to
district
registrars.

13. Whereas by s. 60 of the principal Act it is provided that for the purpose of facilitating the prosecution in country districts of legal proceedings, it shall be lawful for Her Majesty by Order in Council from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined; and whereas it is expedient to amend the said section, be it therefore enacted that—

Where any such order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said order, or any Order in Council amending the same.

Moreover the registrar of any inferior court of record having jurisdiction in any part of any district defined by such order (other than a County Court) shall, if appointed by Her Majesty, be qualified to be a district registrar for the said district, or for any and such part thereof as may be directed by such order, or any order amending the same.

Every district registrar shall be deemed to be an officer of the Supreme Court, and be subject accordingly to the jurisdiction of such Court, and of the divisions thereof.

As to the appointment of District Registrars and their districts, see ss. 60 *et seq.* of the principal Act, *ante*, p. 83. As to proceedings in District Registries see Order V., Rule 1, *post*, p. 168, and note thereto; Order XII., Rules 1 to 5, *post*, p. 181; Order XXXV., *post*, p. 242, and notes thereto.

Amendment
of 36 & 37
Vict. c. 66,
s. 87, as to
enactments
relating to
attorneys.

14. Whereas under s. 87 of the principal Act, solicitors and attorneys will after the commencement of that Act be called solicitors of the Supreme Court: Be it therefore enacted that—

The registrar of attorneys and solicitors in England

shall be called the registrar of solicitors, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron, or any two of them, may, from time to time, by regulation adapt any enactments relating to attorneys, and any declaration, certificate, or form required under those enactments to the solicitors of the Supreme Court under s. 87 of the principal Act.

See *ante*, p. 108.

15. It shall be lawful for Her Majesty from time to time, by Order in Council, to direct that the enactments relating to appeals from county courts shall apply to any other inferior court of record; and those enactments, subject to any exceptions, conditions, and limitations contained in the order, shall apply accordingly, as from the date mentioned in the order.

S. xv.
—
Appeal from inferior court of record.

As to appeals from County Courts see s. 45 of the principal Act, *ante*, p. 81.

16. The Rules of Court in the first Schedule to this Act shall come into operation at the commencement of this Act, and as to all matters to which they extend shall thenceforth regulate the proceedings in the High Court of Justice and Court of Appeal. But such Rules of Court and also all such other Rules of Court (if any) as may be made after the passing and before the commencement of this Act under the authority of the next section may be annulled or altered by the authority by which new Rules of Court may be made after the commencement of this Act.

Rules in 1st Schedule in substitution for 36 & 37 Vict. c. 66, s. 69, and schedule.

See *ante*, p. 97.

17. Her Majesty may at any time after the passing and before the commencement of this Act, by Order in Council, made upon the recommendation of the Lord Chancellor, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and the Lord Justices of Appeal in Chancery or any five of them, and the other judges of the several Courts intended to be united and consolidated by the principal Act as amended by this Act, or of a majority of such other Judges, make any further or additional Rules of Court for carrying the principal Act and this Act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the Rules in the first Schedule to this Act; that is to say,

Provision as to making &c. of Rules of Court before or after the commencement of the Act,—in substitution for 36 & 37 Vict. c. 66, ss. 63, 69, 74, and schedule.

- S. xviii.
- (1.) For regulating the sittings of the High Court of Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the Judges of the said High Court sitting in Chambers ; and
 - (2.) For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal ; and
 - (3.) Generally, for regulating any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein.

In substitution for
36 & 37 Vict.
c. 66, s. 74.

From and after the commencement of this Act, the Supreme Court may at any time, with the concurrence of a majority of the Judges thereof present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), alter and annul any Rules of Court for the time being in force, and have and exercise the same power of making Rules of Court as is by this section vested in Her Majesty in Council on the recommendation of the said Judges before the commencement of this Act.

All Rules of Court made in pursuance of this section shall be laid before each House of Parliament within such time and shall be subject to be annulled in such manner as is in this Act provided.

All Rules of Court made in pursuance of this section, if made before the commencement of this Act, shall from and after the commencement of this Act, and if made after the commencement of this Act, shall from and after they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this section.

The reference to certain Judges in s. 27 of the principal Act shall be deemed to refer to the Judges mentioned in this section as the Judges on whose recommendation an Order in Council may be made.

Under the power given by this section of making further and additional rules after the passing and before the commencement of the Act, a body of Additional Rules have been issued by Order in Council. They will be found, *post*, p. 390. They deal with the printing of documents and furnishing of copies ; costs, scales of costs being given ; taxation, and review of taxation.

Provision as
to Rules of
Probate,

18. All Rules and Orders of Court in force at the time of the commencement of this Act in the Court of Probate,

the Court for Divorce and Matrimonial Causes, and the Admiralty Court, or in relation to appeals from the Chief Judge in Bankruptcy, or from the Court of Appeal in Chancery in bankruptcy matters, except so far as they are expressly varied by the first Schedule hereto or by Rules of Court made by Order in Council before the commencement of this Act shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively, until they shall respectively be altered or annulled by any Rules of Court made after the commencement of this Act.

S. xix.
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Divorce, and Admiralty Courts, being Rules of the High Court, — in substitution for 36 & 37 Vict. c. 66, s. 70.

The present Judge of the Probate Court and of the Court for Divorce and Matrimonial Causes shall retain, and the president for the time being of the Probate and Divorce Division of the High Court of Justice shall have, with regard to non-contentious or common form business in the Probate Court, the powers now conferred on the Judge of the Probate Court by the thirtieth section of the twentieth and twenty-first years of Victoria, chapter seventy-seven, and the said Judge shall retain, and the said president shall have, the powers as to the making of rules and regulations conferred by the fifty-third section of the twentieth and twenty-first years of Victoria, chapter eighty-five.

See *ante*, p. 97.

19. Subject to the First Schedule hereto and any Rules of Court to be made under this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to Crown Cases Reserved, shall be the same as the practice and procedure in similar causes and matters before the commencement of this Act *2 Q. B. D. 43*

Provision as to criminal procedure, subject to future Rules remaining unaltered, — in substitution for 36 & 37 Vict. c. 66, s. 71.

See *ante*, p. 98.

20. Nothing in this Act or in the First Schedule hereto, or in any Rules of Court to be made under this Act, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

Provision as to Act not affecting rules of evidence or juries, — in substitution for 36 & 37 Vict. c. 66, s. 72.

See *ante*, p. 98. As to evidence generally see Order XXXVII. and XXXVIII. *post*, pp. 264, 266 and notes thereto.

21. Save as by the principal Act or this Act, or by any Rules of Court, may be otherwise provided, all forms and

S. xxi. — Provision for saving of existing procedure of Courts when not inconsistent with this Act or rules of Court,—in substitution for 36 & 37 Vict. c. 66, s. 73.

methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is by the principal Act or this Act transferred to the said High Court and to the said Court of Appeal respectively, under or by virtue of any law, custom, general order, or rules whatsoever, and which are not inconsistent with the principal Act or this Act or with any Rules of Court, may continue to be used and practised, in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective courts of which the jurisdiction is so transferred, if the principal Act and this Act had not passed.

Nothing in principal Act to prejudice right to have issues submitted, &c.

22. Whereas by section forty-six of the principal Act is enacted that “any judge of the said High Court sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case or point in a case to be argued before a Divisional Court:” Be it hereby enacted, that nothing in the said Act, nor in any rule or order made under the powers thereof, or of this Act, shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the Judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues :

Provided also that the said right may be enforced either by motion in the High Court of Justice or by motion in the Court of Appeal founded upon an exception entered upon or annexed to the record.

See *ante*, p. 82, and Order XXXVI., Rule 22, *post*, p. 253, and notes thereto.

Regulation of circuits.

23. Her Majesty may at any time after the passing of this Act, and from time to time, by Order in Council, provide in such manner and subject to such regulations as to Her Majesty may seem meet for all or any of the following matters :

1. For the discontinuance, either temporarily, or permanently, wholly or partially, of any existing circuit, and the formation of any new circuit by the union of any counties or parts of counties, or partly in one way and partly in the other, or by

the constitution of any county or part of a county to be a circuit by itself; and in particular for the issue of commissions for the discharge of civil and criminal business in the county of Surrey to the Judges appointed to sit for the trial by jury of causes and issues in Middlesex or London or any of them; and

2. For the appointment of the place or places at which assizes are to be holden on any circuit; and
3. For altering by such authority and in such manner as may be specified in the Order, the day appointed for holding the assizes at any place on any circuit in any case, where, by reason of the pressure of business or other unforeseen cause, it is expedient to alter the same; and
4. For the regulation, so far as may be necessary for carrying into effect any order under this section, of the venue in all cases, civil and criminal, triable on any circuit or elsewhere.

Her Majesty may from time to time, by Order in Council, alter, add to, or amend any Order in Council, made in pursuance of this section; and in making any order under this section may give any directions which it appears to Her Majesty to be desirable to give for the purpose of giving full effect to such Order.

Provided that every Order in Council made under this section shall be laid before each House of Parliament within such time, and shall be subject to be annulled in such manner as is in this Act provided.

Any Order in Council purporting to be made in pursuance of this section shall have the same effect in all respects as if it were enacted in this Act.

The power hereby given to Her Majesty shall be deemed to be in addition to and not in derogation of any power already vested in Her Majesty in respect of the matters aforesaid; and all enactments in relation to circuits, or the places at which assizes are to be holden, or otherwise in relation to the subject-matter of any Order under this section, shall, so far as such enactments are inconsistent with such Order, be repealed thereby, whether such repeal is thereby expressly made or not; but all enactments relating to the power of Her Majesty to alter the circuits of the Judges, or places at which assizes are to be holden, or the distribution of revising barristers among the circuits, or otherwise enabling or facilitating the carrying the objects of this section into effect, and in force at the

S. xxiii.

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time of the passing of the principal Act, shall continue in force, and shall with the necessary variations, if any, apply, so far as they are applicable, to any alterations in or dealings with circuits, or places at which assizes are to be holden, made or to be made after the passing of this Act, or to any other provisions of any Order made under this section; and if any such Order is made for the issue of commissions for the discharge of civil and criminal business in the county of Surrey as before mentioned in this section, that county shall for the purpose of the application of the said enactments be deemed to be a circuit, and the senior judge for the time being so commissioned, or such other judge as may be for the time being designated for that purpose by Order in Council shall, in the month of July or August in every year, appoint the revising barristers for that county, and the cities and boroughs therein.

The expression assizes shall in this section be construed to include sessions under any commission of oyer and terminer, or gaol delivery, or any commission in lieu thereof issued under the principal Act.

Additional power as to regulation of practice and procedure by Rules of Court.

24. Where any provisions in respect of the practice or procedure of any Courts, the jurisdiction of which is transferred by the principal Act or this Act to the High Court of Justice or the Court of Appeal, are contained in any Act of Parliament, Rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal, without prejudice nevertheless to any power of the Lord Chancellor, with the concurrence of the Treasury, to make any Rules with respect to the Paymaster General, or otherwise.

Any provisions relating to the payment, transfer, or deposit into, or in, or out of any Court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

The Lord Chancellor, with the concurrence of the Treasury, may from time to time, by order, determine to what accounts and how intituled any such money or property as last aforesaid, whether paid, transferred, or deposited before or after the commencement of this Act, is to be carried, and modify all or any forms relating to such accounts; and the Governor and Company of the Bank of England, and all other companies, bodies corporate, and persons shall make such entries and altera-

tions in their books as may be directed by the Lord Chancellor, with the concurrence of the Treasury, for the purpose of carrying into effect any such order.

S. xxiv.

25. Every Order in Council and Rule of Court required by this Act to be laid before each House of Parliament shall be so laid within forty days next after it is made, if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament, within the next subsequent forty days on which the said House shall have sat, praying that any such Rule or Order may be annulled, Her Majesty may thereupon by Order in Council annul the same; and the Rule or Order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

Orders and Rules to be laid before Parliament, and may be annulled on address from either House.

This section shall come into operation immediately on the passing of this Act.

26. The Lord Chancellor, with the advice and consent of the Judges of the Supreme Court or any three of them, and with the concurrence of the Treasury, may, either before or after the commencement of this Act, by order, fix the fees and percentages (including the percentage on estates of lunatics) to be taken in the High Court of Justice or in the Court of Appeal, or in any Court created by any commission or in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those Courts or the Supreme Court, or any judge of those Courts, including the masters and other officers in lunacy, and may from time to time by order increase, reduce, or abolish all or any of such fees and percentages, and appoint new fees and percentages to be taken in the said Courts or offices or any of them, or by any such officer as aforesaid.

Fixing and collection of fees in High Court and Court of Appeal.

Any order made in pursuance of this section shall be binding on all the Courts, offices, and officers to which it refers, in the same manner as if it had been enacted by Parliament.

All such fees and percentages shall (save as otherwise directed by the order) be paid into the receipt of Her Majesty's Exchequer and be carried to the Consolidated

S. xxv. Fund, and with respect thereto the following rules shall
— be observed :

- (1.) The fees and percentages shall, except so far as the order may otherwise direct, be taken by stamps, and if not taken by stamps shall be taken, applied, accounted for, and paid over in such manner as may be directed by the order.
- (2.) Such stamps shall be impressed or adhesive, as the Treasury from time to time direct.
- (3.) The Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of stamps and for keeping accounts of such stamps.
- (4.) Any document which ought to bear a stamp in pursuance of this Act, or any rule or order made thereunder, shall not be received, filed, used, or admitted in evidence unless and until it is properly stamped, within the time prescribed by the rules under this section regulating the use of stamps, but if any such document is through mistake or inadvertence received, filed, or used without being properly stamped, the Lord Chancellor or the Court may, if he or it shall think fit, order that the same be stamped as in such order may be directed.
- (5.) The Commissioners of Inland Revenue shall keep such separate accounts of all money received in respect of stamps under this Act as the Treasury may from time to time direct, and, subject to the deduction of any expenses incurred by those Commissioners in the execution of this section, the money so received shall, under the direction of the Treasury, be carried to and form part of the Consolidated Fund.
- (6.) Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to

imprisonment with or without hard labour for a term not exceeding two years.

S. xxvi.

An order under this section may abolish any existing fees and percentages which may be taken in the said Courts or offices, or any of them, or by the said officers or any of them, but subject to the provisions of any order made in pursuance of this section, the existing fees and percentages shall continue to be taken, applied, and accounted for in the existing manner.

27. Whereas by the Common Pleas at Lancaster Amendment Act, 1869, the fees taken by the prothonotaries and district prothonotaries in pursuance of that Act, are directed to be carried to the credit of "the Prothonotaries Fee Fund Account of the County Palatine of Lancaster," and certain salaries and expenses connected with the offices of the said prothonotaries and district prothonotaries, are directed to be paid out of that account :

Provisions
as to Lan-
caster Fee
Fund, and
salaries, &c.,
of officers of
Courts at
Lancaster
and Durham,
32 & 33 Vict.
c. 37.

And whereas, on the twenty-fourth day of June, one thousand eight hundred and seventy-four, there was standing to the credit of that account a sum of ten thousand seven hundred and fifty-five pounds Consolidated three pound per Centum Bank Annuities and one thousand eight hundred and ten pounds cash, or thereabouts :

And whereas the fees received in the Court of Pleas of Durham are applied in payment of disbursements connected with the office of the prothonotary of that Court, and any surplus of such fees is paid into the receipt of Her Majesty's Exchequer, and any deficiency of the amount of the said fees to pay such disbursements is charged on the Consolidated Fund of the United Kingdom :

And whereas after the commencement of the principal Act, the jurisdiction of the Court of Common Pleas at Lancaster and the Court of Pleas at Durham is by that Act transferred to and vested in the High Court of Justice, and it is expedient to make further provision respecting the expenses of those Courts and the said stock and cash standing to the credit of the prothonotaries fee fund account of the county palatine of Lancaster :

Be it therefore enacted that,—

After the commencement of the principal Act there shall be paid out of moneys provided by Parliament such sums by way of salary or remuneration to the prothonotaries and district prothonotaries of the Court of Common Pleas at Lancaster and the Court of Common Pleas at Durham and their clerks, and such sums for rent, taxes, and other outgoings at their offices, as the Lord

S. xxvii. Chancellor, with the concurrence of the Treasury, may from time to time direct.

As soon as each prothonotary and district prothonotary of the Court of Common Pleas at Lancaster has accounted for and paid all fees and moneys which he shall have received by virtue of his said office, the Chancellor of the Duchy of Lancaster shall cause any security given by such officer in pursuance of section seventeen of the Common Pleas at Lancaster Amendment Act, 1869, to be cancelled, and delivered up, or otherwise discharged.

32 & 33 Vict.
c. 37.

As soon as may be after the commencement of the principal Act the Treasury and the Chancellor of the Duchy and County Palatine of Lancaster shall ascertain the amount of stock and cash standing to the credit of the prothonotaries' fee fund account of the County Palatine of Lancaster, after paying thereout to the Receiver-General of the revenues of the Duchy of Lancaster the amount of the fees remaining in the prothonotary's hands on the twenty-fourth day of October, one thousand eight hundred and sixty-nine, and paid to that account in pursuance of section seventeen of the last-mentioned Act, and all other sums justly due to Her Majesty in right of Her said Duchy and County Palatine; and the Treasury shall by warrant direct the Governor and Company of the Bank of England to transfer to the Commissioners for the Reduction of the National Debt the amount of stock and cash so ascertained, and either to cancel the stock in their books or otherwise dispose of the same as may be directed by the warrant; and the Governor and Company of the Bank of England shall transfer the stock and cash, and cancel or otherwise dispose of the stock according to the warrant, without any order from the Lord Chancellor or the Chancellor of the said Duchy and County Palatine or any other person.

The Commissioners for the Reduction of the National Debt shall apply all cash transferred to them in pursuance of this section in the purchase of Bank Annuities which shall be cancelled or otherwise disposed of in like manner as the said stock.

Annual
account of
fees and
expenditure.

28. The Treasury shall cause to be prepared annually an account for the year ending the thirty-first day of March, showing the receipts and expenditure during the preceding year in respect of the High Court of Justice and the Court of Appeal, and of any Court, office, or officer, the fees taken in which or by whom can be fixed in pursuance of this Act.

Such account shall be made out in such form and contain such particulars as the Treasury, with the concurrence of the Lord Chancellor, may from time to time direct.

S. xxix.

Every officer by whom or in whose office fees are taken which can be fixed in pursuance of this Act, shall make such returns and give such information as the Treasury may from time to time require for the purpose of enabling them to make out the said account.

The said account shall be laid before both Houses of Parliament within one month after the thirty-first day of March in each year, if Parliament is then sitting, or, if not, then within one month after the next meeting of Parliament.

29. Whereas fines and other moneys paid into the Court of Queen's Bench for Her Majesty's use are received by the Queen's coroner and attorney, and out of such moneys there is paid in pursuance of a writ of privy seal an annual sum of forty pounds at the rate of ten pounds for every term to the second Judge of the Court of Queen's Bench, and by section seven of the Act of the sixth year of King George the Fourth, chapter eighty-four, it is enacted that the said termly allowance of ten pounds shall continue to be paid to the said second judge in addition to his salary.

Amendment
of law as to
payments of
senior puisne
judge of
Queen's
Bench, and
Queen's
coroner.

And whereas out of the said moneys there is also payable in pursuance of the said writ of privy seal an annual sum of ten pounds to the Queen's coroner and attorney :

And whereas it is expedient to determine such payments :

Be it therefore enacted as follows :

After the passing of this Act the said sums of forty pounds and ten pounds a year shall cease to be payable by the Queen's coroner and attorney out of the above-mentioned moneys.

So long as the person who on the first day of March, one thousand eight hundred and seventy-five, was the second judge of the Court of Queen's Bench continues to be such second judge, there shall be payable to him out of the Consolidated Fund of the United Kingdom the annual sum of forty pounds in addition to his salary, and that annual sum shall be payable to him by instalments of ten pounds at the like times at which the said termly allowance of ten pounds has heretofore been payable to him, or at such other times as the Treasury, with the consent of the Judge, may direct.

So long as the person who, on the first day of March, one thousand eight hundred and seventy-five, was the Queen's

S. xxx.

coroner and attorney continues to hold that office, there shall be payable to him out of moneys provided by Parliament the annual sum of ten pounds, and such sum shall be payable to him at the like time at which the said annual sum of ten pounds has heretofore been payable to him, or at such other time as the Treasury, with the consent of such Queen's coroner or attorney, may direct.

Amendment of 35 & 36 Vict., c. 44, as to the transfer of Government securities to and from the Paymaster General on behalf of the Court of Chancery and the National Debt Commissioners.

30. Whereas by section sixteen of "The Court of Chancery Funds Act, 1872," it is enacted that an order of the Court of Chancery may direct securities standing to the account of the Paymaster General on behalf of the Court of Chancery to be converted into cash, and that where such order refers to Government securities such securities shall be transferred to the Commissioners for the reduction of the National Debt in manner therein mentioned :

And whereas the said section contains no provision for the converse cases of the conversion of cash into securities and the transfer of securities from the said Commissioners to the account of the Paymaster General on behalf of the Court of Chancery :

And whereas such conversion and transfer and the other matters provided by the said section, can be more conveniently provided for by rules made in pursuance of section eighteen of the said Act ; and it is expedient to remove doubts with respect to the power to provide by such rules for the investment in securities of money in Court, and the conversion into money of securities in Court :

Be it therefore enacted as follows :

Section sixteen of "The Court of Chancery Funds Act, 1872," is hereby repealed.

Rules may from time to time be made in pursuance of section eighteen of "The Court of Chancery Funds Act, 1872," with respect to the investment in securities of money in Court, and the conversion into money of securities in Court ; and with respect to the transfer to the Commissioners for the reduction of the National Debt of Government securities ordered by the Court to be sold or converted into cash, and to the transfer by those Commissioners to the Paymaster General for the time being on behalf of the Court of Chancery of Government securities ordered by the Court of Chancery to be purchased

This section shall come into operation on the passing of this Act, and shall be construed together with "The Court

of Chancery Funds Act, 1872," and shall be subject to any alteration in that Act made by or in pursuance of the principal Act or this Act.

S. xxxi.

31. Whereas under the Lunacy Regulation Act, 1853, it is provided that there shall be a secretary to the visitors of lunatics therein-mentioned, and it is expedient to abolish that office: Be it therefore enacted as follows:

Abolition of secretary to the visitors of lunatics, 16 & 17 Vict. c. 70.

After the passing of this Act there shall cease to be a secretary to the visitors of lunatics.

The Treasury shall award, out of moneys provided by Parliament, to the person who holds at the passing of this Act the office of secretary to the visitors of lunatics such compensation by way of annuity or otherwise, as, having regard to the conditions on which he was appointed to his office, the nature, salary, and emoluments of his office, and the duration of his services, they may think just and reasonable, so that the same be granted in accordance with the provisions and subject to the conditions contained in the Superannuation Act, 1859.

22 Vict. c. 26.

32. Whereas by section nineteen of "The Bankruptcy Repeal and Insolvent Act, 1869," it is enacted as follows: "All dividends declared in any Court acting under the Acts relating to bankruptcy or the relief of insolvent debtors which remain unclaimed for five years after the commencement of this Act, if declared before that commencement, and for five years after the declaration of the dividends if declared after the commencement of this Act, and all undivided surpluses of estates administered under the jurisdiction of such Court which remain undivided for five years after the declaration of a final dividend in the case of bankruptcy, or five years after the close of an insolvency under this Act, shall be deemed vested in the Crown, and shall be disposed of as the Commissioners of Her Majesty's Treasury direct; provided that at any time after such vesting the Lord Chancellor may, if he thinks fit, by reason of the disability or absence beyond seas of the person entitled to the sum so vested, or for any other reason appearing to him sufficient, direct that the sum so vested shall be repaid out of moneys provided by Parliament, and shall be distributed as it would have been if there had been no such vesting:"

Amendment of 32 & 33 Vict., c. 83, s. 19, and 32 & 33 Vict., c. 71, s. 116, as to payment of unclaimed dividends to persons entitled.

And whereas a similar enactment with respect to unclaimed dividends in bankruptcy was made by section one hundred and sixteen of "The Bankruptcy Act, 1869:"

And whereas it is expedient to give to persons entitled

32 & 33 Vict. c. 71.

S. xxxiii.
32 & 33 Vict.
cc. 83, 71.

to any such unclaimed dividends or other sums greater facilities for obtaining the same: Be it therefore enacted as follows:

Any Court having jurisdiction in the matter of any bankruptcy or insolvency, upon being satisfied that any person claiming is entitled to any dividend or other payment out of the moneys vested in the Crown in pursuance of section nineteen of "The Bankruptcy Repeal and Insolvent Court Act, 1869," or of section one hundred and sixteen of "The Bankruptcy Act, 1869," may order payment of the same in like manner as it might have done if the same had not by reason of the expiration of five years become vested in the Crown in pursuance of the said sections.

This section shall take effect as from the passing of this Act.

Repeal.

33. From and after the commencement of this Act there shall be repealed—

- (1.) The Acts specified in the Second Schedule to this Act, to the extent in the third column of that schedule mentioned, without prejudice to anything done or suffered before the said commencement under the enactments hereby repealed; also,
- (2.) Any other enactment inconsistent with this Act or the principal Act.

As to vacancies in any office within s. 77 of principal Act.

34. Whereas, by the seventy-seventh section of the principal Act, it is provided that, upon the occurrence of a vacancy in the office of any officer coming within the provisions of the said section, the Lord Chancellor, with the concurrence of the Treasury may, in the event of such office being considered unnecessary, abolish the same, or may reduce the salary, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing judge; but that nothing in the said act contained shall interfere with the office of marshal attending any commissioner of assize: And whereas it is expedient to add to the said section: Be it enacted, that, upon the occurrence of any vacancy coming within the provisions of the said section, an appointment shall not be made thereto for the period of one month without the assent of the Lord Chancellor, given with the concurrence of the Treasury; and, further, the Lord Chancellor may, with the concurrence of the Treasury, suspend the making any appointment to such office for any period not later than the first day of January, one thousand eight hundred and seventy-seven and may, if it be necessary, make provision in such

manner as he thinks fit for the temporary discharge, in the
 meantime, of the duties of such office. S. xxxv.

35. Be it enacted, that any person who at the time of
 the commencement of this Act, shall hold the office of
 chamber clerk shall be eligible at any time thereafter for
 appointment to the like office, anything in the principal
 Act to the contrary notwithstanding; and that, if any
 such person shall be so appointed after the commencement
 of this Act, he shall, if the salary assigned to such office,
 by or under the principal Act, be less than the salary
 received by him at the time of the commencement of this
 Act, be entitled to receive a salary not less than that so
 formerly received by him so long as he shall retain such
 office, but shall not be entitled to receive or claim any
 pension in respect of his service, unless the Treasury, in
 its absolute discretion, shall think fit to sanction the same.

Amendment
 of principal
 Act, s. 79, as
 to chamber
 clerks.

FIRST SCHEDULE.

—o—

RULES OF COURT.*

Order I.
Form and
Commence-
ment of
Action.

[Note.—Where no other provision is made by the Act or these rules the present procedure and practice remain in force.]†

ORDER I.

Form and Commencement of Action.

1. All actions which have hitherto been commenced by writ in the Superior Courts of Common Law at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Pleas at Durham, and all suits which have hitherto been commenced by bill or information in the High Court of Chancery, or by a cause in rem or in personam in the High Court of Admiralty, or by citation or otherwise in the Court of Probate, shall be instituted in the High Court of Justice by a proceeding to be called an action.

The proceedings which, under this rule, are to be instituted by action are Common Law actions, suits in Chancery hitherto commenced by bill or information, and Admiralty and Probate suits. Proceedings in any of the Courts consolidated by the Act which have hitherto been instituted in any other mode, as, for instance, Chancery proceedings commenced by petition or summons, are unaffected by this rule; though others of the rules may affect them; see for instance the rules of Order XIX. as to pleadings, which, by s. 100 of the Judicature Act, 1873, *ante*, p. 114, include petitions and summonses. By Order LXII. (*post*, p. 312), nothing in the rules is to affect the practice or procedure in criminal proceedings, proceedings on the Crown side of the Queen's Bench, or the revenue side of the Exchequer Divisions, or proceedings for divorce or other matrimonial causes.

* These rules derive their authority from s. 16 of the foregoing Act of 1875, *ante*, p. 135.

† See s. 73 of the Judicature Act, 1873, *ante*, p. 99, and s. 21 of the foregoing Act of 1875, *ante*, p. 138.

Order I.
Form and
Commence-
ment of
Action.
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2. With respect to interpleader, the procedure and practice now used by Courts of Common Law under the Interpleader Acts, 1 & 2 Will. 4, c. 58, and 23 & 24 Vict., c. 126, shall apply to all actions and all the divisions of the High Court of Justice, and the application by a defendant shall be made at any time after being served with a writ of summons and before delivering a defence.

This rule and the other provisions referred to below adopt the Common Law Practice as to Interpleader, but with some important modifications. The subject acquires increased importance by reason of s. 25, sub-s. 6 of the Act of 1873, *ante*, p. 63, which allows a debtor or other person liable in respect of a chose in action alleged to have been assigned to call upon rival claimants to interplead. It may be well therefore, first to set out the Interpleader Acts referred to in the above rule, and then to consider what the practice under them, as modified by the new legislation, will be,

The Acts are as follows :—

1 & 2 WILL. IV. C. 58.

An Act to enable Courts of Law to give Relief against Adverse Claims made upon persons having no interest in the subject of such Claims.

[20th Oct., 1831.]

Upon application by a defendant in an action of assumpsit, &c., stating that the right in the subject matter is in a third party, the Court may order such third party to appear, and maintain or relinquish his claim, and in the meantime stay proceeding in such action.

S. 1. "WHEREAS it often happens that a person sued at law for the recovery of money or goods wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in equity against the plaintiff, and such third party usually called a bill of interpleader, which is attended with expense and delay; for remedy thereof, be it enacted, &c., that upon application made by or on the behalf of any defendant sued in any of His Majesty's Courts of Law at Westminster, or in the Court of Common Pleas of the County Palatine of Lancaster, or the Court of Pleas of the County Palatine of Durham, in any action of assumpsit, debt, detinue, or trover, such application being made after declaration, and before plea, by affidavit or otherwise, showing that such defendant does not claim any interest in the subject-matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued, or is expected to sue, for the same; and that such defendant does not in any manner collude with such third party, but is ready to bring into Court, or to pay or dispose of the subject-matter of the action in such manner as the Court (or any judge thereof) may order or direct; it shall be lawful for the Court, or any judge thereof, to make rules and orders calling upon such third party to appear and to state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such rule or order to hear the allegations as well of such third party as of the plaintiff, and in the meantime to stay the proceedings in such action, and finally to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues,* and also to direct which of the parties shall

* By the 8 & 9 Vict. c. 107, s. 19, the use of feigned issues alleging imaginary wagers was abolished, and a form of issue provided. For the form in ordinary use, see Chitty's Forms, p. 809, 9th edit.

be plaintiff or defendant in such trial, or with the consent of the plaintiff and such third party, their counsel or attorneys, to dispose of the merits of their claims, and determine the same in a summary manner, and to make such other rules and orders therein, as to costs and all other matters, as may appear to be just and reasonable.”

Order I.
Form and
Commence-
ment of
Action.
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S. 3. “And be it further enacted, that if such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the Court or judge to declare such third party, and all persons claiming by, from, or under him, to be ever barred from prosecuting his claim against the original defendant, his executors or administrators; saving, nevertheless, the right or claim of such third party against the plaintiff, and thereupon to make such order between such defendant and the plaintiff, as to costs and other matters, as may appear just and reasonable.”

If such third party shall not appear, &c., the Court may bar his claim against the original defendant.

S. 5. “Provided also, and be it further enacted, that if upon application to a judge, in the first instance, or in any later stage of the proceedings, he shall think the matter more fit for the decision of the Court, it shall be lawful for him to refer the matter to the Court, and thereupon the Court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of court, instead of the order of a judge.”

If a judge thinks the matter more fit for the decision of the Court, he may refer it.

S. 6. “And whereas difficulties sometimes arise in the execution of process against goods and chattels, issued by or under the authority of the said Courts, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process has issued, whereby sheriffs and other officers are exposed to the hazard and expense of actions; and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers; be it therefore further enacted, that when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any process, or to the proceeds or value thereof, it shall and may be lawful to and for the Court from which such process issued, upon application of such sheriff or other officer made before or after the return brought against such sheriff or other officer, to call before them, by rule of court, as well as the party issuing such process as the party making such claim, and thereupon to exercise for the adjustment of such claims and the relief and protection of the sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the Court.”

For relief of sheriffs and other officers in execution of process against goods and chattels.

S. 7. “And be it further enacted, that all rules, orders, matters and decisions to be made and done in pursuance of this act, except only the affidavits to be filed, may, together with the declaration in the cause (if any) be entered of record, with a note in the margin, expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by such rule or order, and every such rule or order as entered shall have the force and effect of a judgment, except only as to becoming a charge on any lands, tenements or hereditaments, and in case any costs shall not be paid within

Rules, orders, &c., made in pursuance of this Act, may be entered of record and made evidence.

Costs.

Order I.
Form and
Commence-
ment of
Action.

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Writs.

Sheriffs' fees.

fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same his agent or attorney, execution may issue for the same by *fiery facias* or *capias ad satisfaciendum*, adapted to the case, together with the costs of such entry, and of the execution if by *fiery facias*; and such writ and writs may bear teste on the day of issuing the same, whether in term or vacation; and the sheriff or other officer executing any such writ shall be entitled to the same fees, and no more, as upon any similar writ grounded upon a judgment of the Court."

Upon any
application
under 1 Will.
4, c. 21, and
this Act, the
Court to
exercise such
powers and
make such
rules as are
given by, or
mentioned
in this Act.

S. 8. "And whereas by a certain Act made, and passed in the last session of Parliament, entitled: "An Act to improve the proceedings in prohibition and on writs of mandamus," it was among other things enacted, that it should be lawful for the Court to which application may be made for any such writ of mandamus as is therein, on that behalf mentioned, to make rules and orders calling not only upon the person to whom such writ may be required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ to show cause against the issuing of such writ and payment of the costs of the application, and upon the appearance of such other person in compliance with such rules, or in default of appearance after service thereof, to exercise all such powers and authorities, and to make all such rules and orders applicable to the case as were or might be given or mentioned by or in any Act passed or to be passed during that present session of Parliament, for giving relief against adverse claims made upon persons having no interest in the subject of such claims; and whereas no such Act was passed during the then present session of Parliament, be it therefore enacted, that upon any such application as is in the said Act, and hereinbefore mentioned, it shall be lawful for the Court to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as are given or mentioned by or in this present Act."

1 & 2 Vict.
c. 45.

1 & 2 VICT. c. 45.

An Act (inter alia) to extend the jurisdiction of the Judges of the Superior Courts of Common Law.

Sec. 2.
Any judge
may exercise
such powers
for the relief
of sheriffs,
&c., as may
by virtue of
1 & 2 Will. 4,
c. 58, s. 6, be
exercised by
the several
Courts.

S. 2: "Whereas by another Act passed in the second year of the reign of His late Majesty King William IV., intituled, 'An Act to enable the courts of law to give relief against adverse claims made upon persons having no interest in the subject of such claims,' provision is made for the relief of sheriffs and other officers concerned in the execution of process issued out of any of His Majesty's Courts of Law at Westminster, or of the Court of Common Pleas of the County Palatine of Lancaster, or the Court of Pleas of the County Palatine of Durham, against goods and chattels by reason of claims made to such goods and chattels, but such relief can only be given by rule of court, and whereas it is expedient that a single judge should possess the power of giving relief in that respect; be it further enacted, that it shall be lawful for any judge of the said Courts of Queen's Bench, Common Pleas, or Exchequer, with respect to any such process issued out of any of those Courts, or for any judge of the said Court of Common Pleas of the County Palatine of Lancaster, or Court of Pleas of the County Palatine of Durham (being also a judge of one of the said three Superior Courts) with respect to process

issued out of the said Courts of Lancaster and Durham respectively, to exercise such powers and authorities for the relief and protection of the sheriff or other officer as may by virtue of the said last-mentioned Act be exercised by the said several Courts respectively, and to make such order therein as shall appear to be just; and the costs of such proceedings shall be in the discretion of such judge.”

Order I.
Form and
Commence-
ment of
Action.
—

C. L. P. ACT 1860, 23 & 24 VICT. c. 126.

23 & 24 Vict.
c. 126.

S. 12. “Where an action has been commenced in respect of a common law claim for the recovery of money or goods, or where goods or chattels have been taken or are intended to be taken in execution under process issued from any one of the Superior Courts, or from the Court of Common Pleas at Lancaster or the Court of Pleas at Durham, and the defendant in such action, or the sheriff or other officer, has applied for relief under the provisions of an Act made and passed in the session of Parliament held in the first and second year of the reign of His late Majesty King William the Fourth, intituled ‘An Act to enable the Courts of Law to give relief against adverse claims made upon persons having no interest in the subject of such claims,’ it shall be lawful for the Court or a judge to whom such application is made to exercise all the powers and authorities given to them by this Act and the hereinbefore mentioned Act passed in the session of Parliament held in the first and second years of the reign of His late Majesty King William the Fourth, though the titles of the claimants to the money, goods, or chattels in question, or to the proceeds or value thereof, have not a common origin, but are adverse to and independent of one another.”

Interpleader
may be
granted
though titles
have not
a common
origin.

1 & 2 Will. 4.
c. 58.

S. “13. When goods or chattels have been seized in execution by a sheriff or other officer under process of the above mentioned Courts, and some third person claims to be entitled, under a bill of sale or otherwise, to such goods or chattels by way of security for debt, the Court or a judge may order a sale of the whole or part thereof upon such terms as to payment of the whole or part of the secured debt or otherwise as they or he shall think fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to such Court or judge may seem just.”

Court or
judge may
direct sale
of goods
seized in
execution.

S. 14. “Upon the hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims, it shall be lawful for the Court or judge wherever, from the smallness of the amount in dispute, or of the value of the goods seized, it shall appear to them or him desirable and right so to do, at the request of either party to dispose of the merits of the respective claims of such parties, and to determine the same in a summary manner upon such terms as they or he shall think fit to impose, and to make such other rules and orders therein as to costs and all other matters as may be just.”

Power to
Court or
judge to
decide
summarily
in certain
cases.

S. 15. “In all cases of interpleader proceedings, where the question is one of law and the facts are not in dispute, the judge shall be at liberty, at his discretion, to decide the question without directing an action or issue, and, if he shall think it desirable, to order that a special case be stated for the opinion of the Court.”

Special case
may be
stated where
facts un-
disputed.

Order I.
Form and
Commence-
ment of
Action.

—
Proceedings
on special
case in Court
below and in
error.

Judgment
and decision
when to be
final.

Rules,
orders, &c.,
made into
interpleader
proceedings
may be en-
tered of re-
cord and
made evi-
dence.

S. 16. "The proceedings upon such case shall, as nearly as may be, be the same as upon a special case stated under 'The Common Law Procedure Act, 1852,' and error may be brought upon a judgment upon such case; and the provisions of 'The Common Law Procedure Act, 1854,' as to bringing error upon a special case, shall apply to the proceedings in error upon a special case under this Act."

S. 17. "The judgment in any such action or issue as may be directed by the Court or judge in any interpleader proceedings, and the decision of the Court or judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them."

S. 18. "All rules, orders, matters, and decisions to be made and done in interpleader proceedings under this Act (excepting only any affidavits), may, together with the declaration in the cause, if any, be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment in the Superior Courts of Common Law."

PRACTICE IN INTERPLEADER.

Interpleader is of two kinds:—I. That for the protection of ordinary persons harassed by conflicting claims. II. That for the protection of sheriffs and other officers executing process.

I. Interpleader by ordinary persons.

Relief by interpleader, when the same thing is claimed against the same person by several claimants, has long been given by the Court of Chancery in the exercise of its traditional jurisdiction; and by the Common Law Courts to a very limited extent at Common Law, but mainly under statutory authority. The jurisdiction, however, of the two classes of courts, and the conditions of its exercise, have not been identical.

The Common Law and Equity Courts have alike required:—

That the party seeking protection should himself claim no interest in the subject matter;

That he should be in possession of the subject matter, so as to be able, as well as willing, to comply with the order of the Court with respect to it.

But, on the one hand, Courts of Equity have refused this relief where the party seeking it was under any special liabilities, other than those arising from the title to the property, towards one of the claimants with respect to the subject matter claimed. They have always refused therefore to grant interpleader to an agent or bailee as against his principal or bailor where goods were claimed by another under an adverse independent title: *Crawshay v. Thornton*, 2 M. and Cr. 1; *Story's Equity Jurisprudence*, § 820. Courts of Law have not been so restricted: *Best v. Hayes*, 1 H. & C. 718; *Tanner v. European Bank*, Law Rep., 1 Ex. 261.

On the other hand the Common Law Courts have, at least until lately, given relief by interpleader only when both claims were legal, as distinguished from equitable, though of late the strictness of this rule has been considerably relaxed; *Rusden v. Pope*, Law Rep., 3 Ex. 269; *Bank of Ireland v. Perry*, Law Rep., 7 Ex. 14.

Again, Courts of Law have, under the Interpleader Acts, only had power to give relief after an action (and an action under the 1 & 2 Will. 4, c. 58, of assumpsit, debt, detinue, or trover, or under the Common Law Procedure Act, 1860, in respect of a Common Law claim for the recovery of money or goods) has been commenced against the applicant by one of the claimants. Whereas in Chancery it has been enough that conflicting claims have been made, though no legal proceedings have been actually commenced. The above rule, which says that the application *by a defendant* may be made at the time specified, seems to contemplate that the relief may also have to be sought otherwise than by a defendant. And sec. 25 sub-s. 6 of the Judicature Act, 1873, *ante*, p. 63, also appears to allow relief by interpleader in cases falling within that section after notice of conflicting claims without waiting for an action to be brought. And generally it may probably be presumed that wherever heretofore one Court has had power to give relief under circumstances in which the other could not do so, the more liberal rule will for the future prevail in all divisions of the Court. See ss. 16 and 24 of the principal Act. By the above rule the Common Law practice in interpleader is to prevail, except of course so far as the rule itself, or any other provision in the new legislation, modifies it.

Order I.
Form and
Commence-
ment of
Action.

Heretofore, under the Interpleader Acts, the application could only be made after declaration and before plea. Under this rule it may be made after service of the writ and before defence.

The application is made at chambers by summons calling upon the claimant to appear and state his claim.

It is made to a Judge; a Master of the Queen's Bench, Common Pleas or Exchequer Division, has no jurisdiction; Order LIV., Rule 2, *post*, p. 297. Nor has a District Registrar; Order XXXV., Rule 5, *post*, p. 245.

The application is made on affidavit, showing (1 & 2 Will. IV. c. 5, s. 1, *ante*, p. 152) that the applicant does not claim any interest in the subject matter, but that the right is claimed or supposed to belong to a third party who has sued or is expected to sue, and that the applicant does not collude with such third party, but is ready to bring into Court or to pay or dispose of the subject matter of the action as may be ordered.

If the party summoned does not appear to maintain his claim an order may be made barring it (1 & 2 Will. IV. c. 58, s. 3, *ante*, p. 153).

If the party summoned does appear to maintain his claim several courses are open:—

If from the smallness of the amount in dispute or the value of the goods seized it appears desirable, the judge may, on the application of either party, dispose of the matter summarily (C. L. P. Act, 1860, s. 14, *ante*, p. 155):

If the question is one of law, and the facts are not in dispute, the judge may in his discretion decide the question summarily (C. L. P. Act, 1860, s. 15, *ante*, p. 155):

If, as in the last case, the question is one of law, the judge may order a special case to be stated for the opinion of the Court: (*ibid.*)

The judge may order the claimant to make himself defendant in the original action pending against the party seeking relief by interpleader, or in some other action; or may order an issue to be tried, and may direct who shall be plaintiff and who defendant in such issue (1 & 2 Will. IV. c. 58, s. 1, *ante*, p. 152).

By the C. L. P. Act, 1860, s. 17, following 1 & 2 Will. IV., c. 58,

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Writ of
Summons
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dure, &c.
—

s. 2, the decision of the Court or a judge was made final. S. 19 of the Judicature Act, 1873, gives an appeal from every judgment or order, "save as hereinafter mentioned." As the Amendment Act, 1875, is to be read as one with that Act, and the above rule adopting the procedure under the Interpleader Acts is in the schedule, the case of interpleader may perhaps be held to fall within the words "save as hereinafter mentioned." If so, there will still be no appeal in interpleader. But on the other hand, it may well be doubted whether the right of appeal properly falls within the words "procedure and practice" as used in the rule. It was held, however, in *Withers v. Parker*, 4 H. & N. 810, that the appeal given by the 34th section of the C. L. P. Act, 1854, against a decision of the Court discharging a rule after leave to move had been reserved at the trial, applied to a point reserved on the trial of an interpleader issue.

II. Interpleader by sheriffs.

The second kind of interpleader in use is that for the protection of sheriffs and other officers executing process. It is governed by the statutes above set out, and the procedure is the same as in other cases. In the rule now under comment it will be observed that the provision that the application shall be made after service of a writ is only in the case of a defendant. A sheriff has never had to wait till an action was brought against him.

3. All other proceedings in and applications to the High Court may, subject to these Rules, be taken and made in the same manner as they would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if the Act had not been passed.

ORDER II.

WRIT OF SUMMONS AND PROCEDURE, &c.

1. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.

As to the indorsement of claim, see the next order.

The words of this rule are general, requiring the indorsement to state *the nature of the claim, or of the relief or remedy required*. It seems then in terms to include the case in which a mandamus or an injunction, or the appointment of a receiver is to be sought. On the other hand, by s. 25, sub-s. 8 of the Act of 1873, the Court is empowered to grant any of these things "by an interlocutory order in all cases in which it shall appear just or convenient." And by Order XII., rule 4, *post*, p. 182, the application may be made either

ex parte or with notice. It would appear therefore that if the claim for a mandamus or an injunction, or the appointment of a receiver be a substantive part of what the Plaintiff brings his action to obtain, he ought to indorse his writ accordingly; see forms in Appendix A, *post*, p. 323; but that the Court has full discretion to give such relief if the necessity for it arises incidentally in the course of the action. By Order III., Rule 2, *post*, p. 65, a defective indorsement may be amended.

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Summons
and Proce-
dure, &c.
—

By ss. 33 and 42 of the Judicature Act, 1873, *ante*, pp. 73, 80, the writ of summons in an action commenced in the Chancery Division must also as hitherto be marked with the name of some particular Judge of that division to whom the plaintiff chooses to assign the action.

As to notice to the proper officer of the choice of Division, see s. 11 of the Act of 1875; and Order V., rule 9, *post*, p. 171.

By Order V., rules 2 and 3, *post*, p. 169, where the writ is issued in a District Registry, then, if the Defendant neither resides nor carries on business within the District, there must be a statement on the face of the writ that he may appear either in London or in the District Registry; and if he resides or carries on business within the District a statement that he is to appear there.

2. Any costs occasioned by the use of any more prolix or other forms of writs, and of indorsements thereon, than the forms hereinafter prescribed, shall be borne by the party using the same, unless the Court shall otherwise direct.

For forms of writs and indorsements, see Appendix A, *post*, p. 315.

The question of undue prolixity will be enquired into by the taxing officer; Additional Rules, *post*, pp. 413, 414.

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in form No. 1 in part 1 of Appendix (A), hereto, with such variations as circumstances may require.

ORDER II.—WRIT OF SUMMONS AND PROCEDURE. *June 1/76*

2. Forms 2 and 3 in Part 1 of Appendix A to "The Rules of the Supreme Court" shall be read as if the words "by leave of the Court or a Judge" were not therein.

Order II.,
Rule 3 (a).

summary actions. The writ was different; it gave sixteen days to appear instead of, as in other actions, eight. There were no pleadings, but the defendant who appeared went to trial to try the plaintiff's right to recover the premises described in the writ. For the future, an action for the recovery of land will, with a few exceptions, proceed in like manner to any other action. The writ will be the same, the indorsement only, as in other actions, showing the nature of the claim. There will be pleadings as in other actions. The most material differences will be that the right of a landlord to intervene and defend is preserved (Order XII., Rules 18, *post* p. 184), and that a defendant in possession need not in general plead his title (Order XIX, Rule 15, *post*, p. 210).

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Summons
and Proce-
dure, &c.

4. No writ or summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of a Court or Judge.

See Order XI., *post*, p. 179, and note thereto, where the subject is fully considered.

5. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in form No. 2 in Part I. of Appendix (A) hereto, with such variations as circumstances may require. Such notice shall be in form No. 3 in the same Part, with such variations as circumstances may require.

6. With respect to actions upon a bill of exchange or promissory note, commenced within six months after the same shall have become due and payable, the procedure under the Bills of Exchange Act, 18 & 19 Vict. c. 67, shall continue to be used.

The Bills of Exchange Act, so far as it is material to set out, is as follows :

THE SUMMARY PROCEDURE ON BILLS OF EXCHANGE ACT, 1855.
18 & 19 VICT. c. 67.

An Act to facilitate the remedies on Bills of Exchange and Promissory Notes, by the prevention of frivolous or fictitious defences to actions thereon.

(23rd July, 1853.)

"Whereas *bonâ fide* holders of dishonoured bills of exchange and promissory notes are often unjustly delayed and put to unnecessary expense in recovering the amount thereof, by reason of frivolous or fictitious defences to actions thereon, and it is expedient that greater facilities than now exist should be given for the recovery of money due on such bills and notes: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by authority of the same, as follows :—

From Oct.
24, 1855, any
actions upon
bills of
exchange,
&c., may be
by writ of
summons as
form in
schedule A.
Plaintiff on
filing
affidavit of
personal
service may
at once sign.
Final
judgment
as form in
schedule B.

S. 1. "From and after the 24th day of October, 1855, all actions upon bills of exchange or promissory notes commenced within six months after the same shall have become due and payable, may be made by writ of summons in the special form contained in schedule A to this Act, annexed and endorsed as therein mentioned; and it shall be lawful for the plaintiff in filing an affidavit of personal service of such writ within the jurisdiction of the Court, or an order for leave to proceed as provided by the 'Common Law Procedure Act, 1852,' and a copy of the writ of summons and the endorsements thereon, in case the defendant shall not have obtained leave to appear, and have appeared to such writ according to the exigency thereof, at once to sign final judgment in the form contained in Schedule B to this Act annexed (on which judgment no proceedings in error shall lie), for any sum not exceeding the sum endorsed on the writ, together with interest at the rate specified (if any) to the date of the judgment, and

a sum for costs to be fixed by the masters of the Superior Courts, or any three of them, subject to the approval of the judges thereof, or any eight of them (of whom the Lord Chief Justices and the Lord Chief Baron shall be three), unless the plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way, and the plaintiff may upon such judgment issue execution forthwith.”

Order II.
Writ of
Summons
and Proce-
dure, &c.
—

S. 2. “A judge of any of the said Courts shall, upon application within the period of twelve days from such service, give leave to appear to such writ and to defend the action, on the defendant paying into Court the sum endorsed on the writ, or upon affidavits satisfactory to the judge, which disclose a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the judge may deem sufficient to support the application, and on such terms as to security or otherwise as to the judge may seem fit.”

Defendant
showing a
defence upon
the merits
to have leave
to appear.

S. 3. “After judgment the Court or a judge may under special circumstances set aside the judgment, and if necessary stay or set aside execution, and may give leave to appear to the writ, and to defend the action, if it shall appear to be reasonable to the Court or judge so to do, and on such terms as to the Court or judge may seem just.”

Judge may
under special
circumstances
set aside judg-
ment.

S. 4. “In any proceedings under this Act it shall be competent to the Court or a judge to order the bill or note sought to be proceeded upon to be forthwith deposited with an officer of the Court, and further to order that all proceedings shall be stayed until the plaintiff shall have given security for the costs thereof.”

Judge may
order bill to
be deposited
with officer
of Court in
certain
cases.

S. 5. “The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise by reason of such dishonour as he has under this Act for the recovery of the amount of such bill or note.”

Remedy for
the recovery
of expenses
of noting
non-accept-
ance of
dishonoured
bill.

S. 6. “The holder of any bill of exchange or promissory note may, if he think fit, issue one writ of summons according to this Act against all or any number of the parties to such bill or note, and such writ of summons shall be the commencement of an action or actions against the parties therein named respectively, and all subsequent proceedings against such respective parties shall be in like manner, so far as may be, as if separate writs of summons had been issued.”

Holder of
bill of ex-
change may
issue one
summons
against all
or any of
the parties
to the bill.

S. 7. “The provisions of the ‘Common Law Procedure Act, 1852,’ and the ‘Common Law Procedure Act, 1854,’ and all rules made under or by virtue of either of the said Acts shall, so far as the same are or may be made applicable, extend and apply to all proceedings to be had or taken under this Act.”

Common
Law Proce-
dure Acts
and rules
incorporated
with this
Act.

S. 10. “Nothing in this Act shall extend to Ireland or Scotland.”

Extent of
Act.

S. 11. “In citing this Act in any instrument, document, or proceeding, it shall be sufficient to use the expression, ‘The Summary Procedure on Bills of Exchange Act, 1855.’”

Short title.

Order II.
Writ of
Summons
and Proce-
dure, &c.
—

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

(A.)

“VICTORIA, by the grace of God, &c.

To *C. D.*, of _____, in the county of _____.

We warn you, that unless within twelve days after the service of this writ on you, inclusive of the day of such service, you obtain leave from one of the judges of the Courts at Westminster to appear, and do within that time appear in our Court of _____ in an action at the suit of *A. B.*, the said *A. B.* may proceed therein to judgment and execution. Witness, &c.

Memorandum to be subscribed on the Writ.

N. B.—This writ is to be served within six calendar months from the date hereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

Indorsement to be made on the Writ before service thereof.

This writ was issued by *E. F.*, of _____, attorney for the plaintiff, or this writ was issued in person by *A. B.*, who resides at _____ (*mention the city, town, or parish, and also the name of the hamlet, street, and number of the house of the plaintiff's residence.*)

Indorsement.

The plaintiff claims (_____ pounds, principal and interest), or _____ pounds, balance of principal and interest due to him as payee (or indorsee) of a bill of exchange or promissory note, of which the following is a copy :—

(*Here copy bill of exchange or promissory note, and all indorsements upon it.*)

And if the amount thereof be paid to the plaintiff or his attorney within _____ days from the service hereof, further proceedings will be stayed.

NOTICE.

Take notice, that if the defendant do not obtain leave from one of the judges of the Courts within twelve days after having been served with this writ, inclusive of the day of such service, to appear thereto, and do within such time cause an appearance to be entered for him in the Court out of which this writ issues, the plaintiff will be at liberty, at any time after the expiration of such twelve days, to sign final judgment for any sum not exceeding the sum above claimed, and the sum of £ _____ for costs, and issue execution for the same.

Leave to appear may be obtained on an application at the Judges' Chambers, Serjeants' Inn, London, supported by affidavit showing that there is a defence to the action on the merits, or that it is reasonable that the defendant should be allowed to appear in the action.

Indorsement to be made upon the Writ after Service thereof.

This writ was served by *X. Y.* on *L. M.* (the defendant _____ the defendants), on *Monday*, the _____ day of _____, 18 ____ .
By *X. Y.*”

(B.)

Order II.
Writ of
Summons
and Proce-
dure, &c.

“In the Queen’s Bench :

On the day of , , in the year of our Lord,
18 (*day of signing Judgment.*)England, } A. B. in his own person (or by his attorney)
to wit. } sued out a writ against C. D., indorsed as follows :—*(Here copy Indorsement of Plaintiff’s Claim.)*

And the said C. D. has not appeared :

Therefore it is considered that the said A. B. recover against the
said C. D. pounds, together with pounds for cost of suit.

By Reg. Gen., November 26th, 1855.

*The indorsements on writs under this Act (the above Act) may be
in the following form :—*This writ was issued by E. F., of, &c., attorney for the plaintiff,
or by A. B., who resides at (*mention the city, town, or parish, and also
the name of the hamlet, street, and the number of the house of the
plaintiff’s residence.*)The plaintiff claims £ , principal and interest (or
pounds, balance of principal and interest), due to him as the payee,
(or indorsee) of a bill of exchange (or promissory note) of which
the following is a copy :—*(Here copy bill of exchange or promissory note, and all endorsements
upon it.)*And also shillings for noting (*if noting has been paid*),
and £ for costs. And if the amount thereof be paid to the
plaintiff or his attorney within four days from the service hereof,
further proceedings will be stayed.

NOTICE.

Take notice, that if the defendant do not obtain leave from one
of the judges of the Courts within twelve days after having been
served with this writ, inclusive of the day of such service, to appear
thereto, and do “not” within such time cause an appearance to be
entered for him in the Court out of which this writ issues, the
plaintiff will be at liberty, at any time after the expiration of such
twelve days, to sign final judgment for any sum not exceeding the
sum above claimed, and the sum of £ for costs, and issue
execution for the same.Leave to appear may be obtained on an application at the Judges’
Chambers, Serjeants’ Inn, London, supported by affidavit showing
that there is a defence to the action on the merits, or that it is
reasonable that the defendant should be allowed to appear in the
action.*Indorsement to be made on the Writ after Service thereof.*This writ was served by X. Y. on L. M. (the defendant), on
Monday, the day of 185 , by X. Y.”A cheque on a banker is a bill of exchange within this act;
Eyre v. Waller, 5 H. & N. 460 ; so is a note payable on demand,
and the six months in this case run from the date : *Maltby v.
Murrells*, 5 H. & N. 813. The issue of such a writ after the six
months is only an irregularity, and may be waived by consent,
ibid ; or the irregularity may be amended by turning the writ
into one of the ordinary kind, *Leigh v. Baker*, 2 C. B., N. S., 367.

Order II.
Writ of
Summons
and Proce-
dure, &c.

By R. G. M. T., 1855, modified by R. G. H. T., 1858, no claim could be joined in the same action with that upon the bill, except one upon the consideration; and the effect of the rule now under comment would seem to be to keep alive this restriction.

Application for leave to appear is made at chambers. In the Queen's Bench, Common Pleas, or Exchequer Divisions, the application is to a master; Order LIV., Rule 2.

The defendant, by the terms of the Act, is entitled to be let in to defend upon bringing into Court the amount indorsed on the writ. But more frequently the application is based upon affidavits intended to show that the defendant has a good defence to the action. The practice with respect to giving leave to appear on this ground has not always been quite uniform. But the true rule, and that now acted upon, seems to be that if the defendant, by his affidavit, discloses a real defence of whatever nature, he is entitled to leave to appear; *Agra Bank v. Leighton*, Law Rep. 2 Ex. 56; *Casella v. Darton*, Law Rep. 8 C. P. 100; and the Court or a judge will not try the truth of the defence on affidavit, but if there be reason to doubt the genuineness of the defence, leave may be refused or granted conditionally; *Agra Bank v. Leighton*, *ubi supra*. In such cases it is not unusual to require the defendant to bring into Court the whole or a part of the sum claimed as the condition of being allowed to defend.

The leave to appear may be rescinded if it be shown by affidavit that the defence *prima facie* disclosed before the defendant's affidavit does not exist; *Agra Bank v. Leighton*, *ubi supra*; or for other reasons, *e.g.*, that the leave has been fraudulently obtained; *Pollock v. Turnock*, W. 1 H. & N. 741.

The defendant, by his affidavit, has only to show any ground of defence. He is not restricted afterwards from relying on any other defence which he can prove. *Saul v. Jones*, 1 E. & E. 59.

The Order in which the rule now under comment occurs purports to deal with "writs of summons and procedure, &c.," *i.e.* procedure with respect to writs. When therefore the rule says that the procedure under the Bills of Exchange Act shall continue to be used, it is pretty obvious that it means the procedure so far as relates to the writ, its issue, and its peculiar effect in requiring the Defendant to obtain leave to appear. It cannot have been intended to keep alive in this particular instance the old system of pleading and procedure generally.

7. The writ of summons in every Admiralty action in rem shall be in Form No. 4 of Part I. of Appendix (A) hereto, with such variations as circumstances may require.

8. Every writ of summons and also every other writ shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England.

ORDER III.

Order III.
Indorsements of
Claim.
—

INDORSEMENTS OF CLAIM.

1. The indorsement of claim shall be made on every writ of summons before it is issued.

Four different kinds of indorsement are dealt with in this order :—

1. The "statement of the nature of the claim made, or of the relief or remedy required," prescribed by Order II., Rule 1, and dealt with in the first five rules of this order ;
2. The indorsement of the amount of debt and costs required, when the claim is for a debt, by Rule 7 of this order, following s. 8 of the C. L. P. Act, 1852 ;
3. The special indorsement authorized by Rule 6 of this order, as heretofore by s. 25 of the C. L. P. Act, 1852, to warrant proceedings in case of default of appearance under Order XII., Rules 3 and 4, or notwithstanding appearance under Order XIV.
4. The indorsement of a claim for an account under Rule 8 of this order, to warrant proceedings under Order XV.

2. In the indorsement required by Order II., Rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. The plaintiff may by leave of the Court or Judge amend such indorsement so as to extend it to any other cause of action or any additional remedy or relief.

The object of this indorsement seems to be to identify the controversy and the claim to which the action relates, so as, amongst other advantages, to facilitate a settlement without the action's going further. In certain cases, as where the defendant fails to appear, the indorsement will take the place of pleadings, and damages may be assessed upon it ; Order XIII., Rule 6. But if the action proceeds and pleadings are delivered, the plaintiff in his claim must state both his complaint and the relief he seeks. He cannot rely upon his indorsement for either ; Order XIX., Rule 2.

3. The indorsement of claim may be to the effect of such of the Forms in Part II. of Appendix (A) hereto as shall be applicable to the case, or if none be found applicable then such other similarly concise form as the nature of the case may require.

4. If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, the indorsement shall show, in manner appearing by the statement in Appendix (A) hereto, Part II., Sec. VIII, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

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Indorse-
ments of
Claim.

5. In probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, devisee, or in any and what other character.

6. In all actions where the plaintiff seeks merely to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising upon a contract, express or implied, as, for instance, on a bill of exchange, promissory note, cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guaranty, whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, cheque, or note, or on a trust, the writ of summons may be specially indorsed with the particulars of the amount sought to be recovered, after giving credit for any payment or set-off.

The use of this indorsement is, as it always has been, purely optional. But the advantage of using it is very great; for it will not only, as heretofore, entitle the plaintiff to final judgment in case of default of appearance; Order XIII., Rules 3 and 4, *post*, p. 186, but also to final judgment notwithstanding appearance, unless the defendant can satisfy a judge that he has a defence, or ought to be allowed to defend; Order XIV., *post*, p. 189.

This rule and the others referred to in the last note do not interfere with the right to proceed under the Bills of Exchange Act, see Order II., Rule 6, *ante*, p. 160.

This rule corresponds to s. 25 of the C. L. P. Act, 1852, but it differs in two points. First, the rule includes the case of a liquidated sum payable on a trust, which the former section did not. Secondly, there are no words in the rule, as there were in the section, limiting its operation to cases in which the defendant resides within the jurisdiction.

7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, beside stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state, that upon payment thereof within four days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement may be in the form in Appendix (A) hereto, Part II., Sec. III. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

The use of this indorsement, it will be observed, is obligatory.

This rule is to the same effect as s. 8 of the C. L. P. Act, 1852. The only effect of such indorsement is to entitle the defendant to settle the claim by payment within four days; the plaintiff is not bound by it for any other purpose; *Jacquot v. Boura*, 5 M. & W. 155, 156.

Order IV.
Indorsement
of Address.

8. In all cases of ordinary account, as, for instance, in the case of a partnership or executorship or ordinary trust account, where the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

For proceedings when a writ is thus indorsed, see Order XV., *post*, p. 191.

The use of this indorsement is optional; but as, under the Order referred to, it will ordinarily entitle the plaintiff to an order for an account, as of course, and so give him often all that he could hitherto have obtained by a Chancery suit, the advantages of its use are obvious.

ORDER IV.

INDORSEMENT OF ADDRESS.

1. The solicitor of a plaintiff suing by a solicitor shall indorse upon every writ of summons and notice in lieu of service of a writ of summons the address of the plaintiff

2. Notwithstanding anything to the contrary contained in Order IV. of "The Rules of the Supreme Court," Rules 1 and 2 of such Order shall only apply where the writ of summons is issued out of the London Office.

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Rule 2a.

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where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

Under the C. L. P. Act, 1852, s. 6, the attorney issuing the writ, or the plaintiff, if he did so in person, was obliged to indorse his name and residence. But the provision in these rules as to an address for service indorsed on the writ is new.

It has not hitherto been necessary to indorse the address of the plaintiff, in a case where an attorney was employed, either on a Common law writ, or on a bill in Chancery.

2. A plaintiff suing in person shall indorse upon every writ of summons and notice in lieu of service of a writ of summons his place of residence and occupation, and also, if his place of residence shall be more than three miles from

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Temple Bar, another proper place, to be called his address for service, which shall not be more than three miles from Temple Bar, where writs, notices, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

[*The above two Rules are to apply to all cases in which the writ of summons is issued out of the London office, or out of a district registry where the defendant has the option of entering an appearance either in the district registry or the London office.*]

3. In all other cases where a writ of summons is issued out of a district registry it shall be sufficient for the solicitor to give on the writ the address of the plaintiff and his own name or firm and his place of business within the district, or for the plaintiff if he sues in person to give on the writ his place of residence and occupation, and if his place of residence be not within the district, an address for service within the district.

ORDER V.

ISSUE OF WRITS OF SUMMONS.

1. *Place of Issue.*

1. In any action other than a Probate action, the plaintiff wherever resident may issue a writ of summons out of the registry of any district.

London is not expressly mentioned in this rule; but it seems obvious that the intention cannot be to prohibit the issue of writs in London.

It may be convenient here to state shortly the effect of the rules in this schedule with respect to the place in which proceedings are to be carried on, and the jurisdiction of District Registrars:—

Any writ of summons may be issued, in the discretion of the plaintiff, either in the office in London, or in any District Registry.

If the writ is issued in London the appearances will be entered in London (Order XII., Rule 1).

If the writ is issued in a District Registry, any defendant residing or carrying on business within the district must appear there (Order XII., Rule 2); the district being by s. 60 of the Act of 1873, *ante*, p. 88, to be fixed by Order in Council. See the Order, *post*, p. 418. Any defendant not residing or carrying on business within the district may appear either in the District Registry or in London (Order XII., Rule 3).

In any case, a defendant, who appears elsewhere than where the writ is issued, must give notice of his appearance; Order XII. Rule 6.

If the defendant or all the defendants appear in the District Registry the action will proceed there (Order XII., Rule 4).

If the defendant or any of the defendants appear in London the action will proceed there (Order XII., Rule 5).

Although the action proceeds in London, the Court or a Judge may still order any books or documents to be produced or accounts to be taken or inquiries made in any District Registry (s. 66 of Judicature Act, 1873). And in this case, as well as when the action proceeds in a District Registry, the trial may be anywhere (Order XXXVI., Rules 1 *et seq.*).

When the action proceeds in the District Registry the proceedings will be taken there down to the following points :—

i. If final judgment can be entered or an order for an account had by default down to such judgment or order (Order XXXV., Rule 1).

ii. If an interlocutory judgment can be entered for default, either of appearance or pleading, both it and after damages are assessed, final judgment may be entered in the District Registry (*ibid.*).

iii. Judgment may be entered in the Registry, unless otherwise ordered (*Ibid.*).

iv. In other cases proceedings go on in the Registry down to notice of trial (S. 64 of the Judicature Act, Order XXXV., Rule 1).

Whilst the action is in the District Registry the registrar will have the jurisdiction of a judge at chambers, except in matters over which a Master of the Queen's Bench, Common Pleas, or Exchequer Division has no jurisdiction (Order XXXV., Rule 4; Order LIV., Rule 2). And an appeal lies to a judge from a district registrar as from a master (Order XXXV., Rule 7). Execution may issue and costs be taxed in the Registry (Order XXXV., Rule 3).

All documents required to be filed will be filed in the Registry (Order XIX., Rule 29).

If the action would, under the rules before stated proceed in the District Registry, it may be removed by any defendant as of right upon notice at any time before delivering his defence, except that if the writ be specially indorsed he must either have obtained leave to defend under Order XIV., or four days after appearance must have elapsed without the plaintiff applying for final judgment under that order. And the action may, by leave of the Court or a Judge, be removed on the application of any party (s. 65 of the Judicature Act. And conversely if the action is proceeding in London a judge may remove it to a District Registry (Order XXXV., Rules 11 to 13).

2 In all cases where a defendant neither resides nor carries on business within the district out of the registry whereof a writ of summons is issued, there shall be a statement on the face of the writ of summons that such defendant may cause an appearance to be entered at his option either at the district registry or the London office, or a statement to the like effect.

3. In all cases where a defendant resides or carries on business within the district, and a writ of summons is issued out of the district registry, there shall be a statement on the face of the writ of summons that the defendant do cause an appearance to be entered at the district registry, or to the like effect.

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Issue of
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Issue of
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2. *Option to choose division in certain cases.*

4. Subject to the power of transfer, every person by whom any cause or matter may be commenced in the High Court of Justice which would have been within the non-exclusive cognizance of the High Court of Admiralty, if the said Act had not passed, shall assign such cause or matter to any one of the divisions of the said High Court, including the Probate, Divorce, and Admiralty Division, as he may think fit, by marking the document by which the same is commenced with the name of the division, and giving notice thereof to the proper officer of the Court. If so marked for the Chancery Division the same shall be assigned to one of the Judges of such division by marking the same with the name of such of the said Judges as the plaintiff or petitioner (subject to such power of transfer) may think fit.

Section 34 of the Judicature Act assigned certain classes of causes (subject to rules of court) to the various Divisions of the High Court of Justice, those assigned to the Probate, Divorce, and Admiralty Divisions being, in addition to pending matters, all causes and matters hitherto within the *exclusive* cognizance of the Probate, Divorce, or Admiralty Courts. Section 35 (subject to rules of court and the provisions of the previous section) empowered a plaintiff to lay his action in any division, not being the Probate, Divorce, and Admiralty Division. The result of those sections, if uncontrolled by rule, would have been to deprive suitors of the power of taking into the Court of Admiralty any cause in which that Court has hitherto had concurrent jurisdiction with any other Court. Hence the necessity for the above rule. But the rule appears now to be rendered superfluous by s. 11 of the Act of 1875, which is substituted for s. 35 of the earlier Act, *ante*, p. 132.

As to marking the writ with the name of the division to which the action is assigned, see s. 11 of the Act of 1875, *ante*, p. 132, and Order II., Rule 1, *ante*, p. 158; as to notice to the proper officer, see *ibid.*, and Rule 9, *post*.

As to marking with the name of a judge in the Chancery Division, see ss. 33 and 42 of the Judicature Act, 1873, *ante*, pp. 73, 80.

As to transfers, see Order LI., *post*, p. 290, and note thereto.

3. *Generally.*

5. Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as hereby directed in the case of proceedings directed to be printed. See Order LVI., Rule 2, *post*, p. 299.

6. Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued.

7. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a

copy, written or printed, or partly written and partly printed, on paper of the description aforesaid, of such writ, and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

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8. The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the cause book, which is to be kept in the manner in which cause books have heretofore been kept by the clerks of records and writs in the Court of Chancery, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such last-mentioned cause books.

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3. The following words are hereby added to the end of Order V., Rule 8, of "The Rules of the Supreme Court" :—

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"And when such action shall be commenced in a district registry, it shall be further distinguished by the name of such registry."

the name of the division chosen, and give notice to the proper officer.

4. *In Particular Actions.*

10. The issue of a writ of summons in Probate actions shall be preceded by the filing of an affidavit made by the plaintiff or one of the plaintiffs in verification of the indorsement on the writ.

11. In Admiralty actions in rem no writ of summons shall issue until an affidavit by the plaintiff or his agent has been filed, and the following provisions complied with :

(a.) The affidavit shall state the name and description of the party on whose behalf the action is instituted, the nature of the claim, the name and nature of the property to be arrested, and that the claim has not been satisfied.

(b.) In an action of wages the affidavit shall state the national character of the vessel proceeded against ; and if against a foreign vessel, that notice of the institution of the action has been given to the Consul of the State to which the vessel belongs, if there be one resident in London (*a copy of the notice shall be annexed to the affidavit.*)

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Concurrent
Writs.

- (c.) In an action of bottomry, the bottomry bond, and if in a foreign language also a notarial translation thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.
- (d.) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address, and description of the party holding the same.
- (e.) The Court or Judge may in any case, if he think fit, allow the writ of summons to issue although the affidavit may not contain all the required particulars. In a wages cause he may also waive the service of the notice, and in a cause of bottomry, the production of the bond.

12. If, when any property is under arrest in Admiralty, a second or subsequent action is instituted against the same property, the solicitor in such second action may, subject to the preceding rules, take out a writ of summons in rem and cause a caveat against the release of the property to be entered in the Caveat Release Book herein-after mentioned.

ORDER VI.

CONCURRENT WRITS.

1. The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

Hitherto under s. 9 of C. L. P., 1852, a concurrent writ could only be issued within, and only remained in force for, six months after the issue of the original writ, that being the time for which the original writ was operative. The time is by this rule extended to twelve months.

By the terms of the rule the concurrent writ can only be issued within the twelve months for which the original writ is

current. And under similar language in the section of the C. L. P. Act, 1852, above referred to, it was held that a concurrent writ could not be issued after the renewal of the original writ; *Cole v. Sherard*, 11 Exch. 482. Order VII.
Disclosure
by Solicitors
and Plain-
tiffs. —

As to the renewal of original and concurrent writs, see Order VIII., *post*, p. 174.

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

This rule is identical with s. 22 of C. L. P. Act, 1852.

ORDER VII.

DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

1. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge.

This rule is substantially the same as s. 77 of the C. L. P. Act, 1852, except that under that section the attorney, if he stated that the writ had been issued by his authority, might further be required, on pain of contempt, to state the occupation and place of abode of the plaintiff. The words requiring this are omitted in this rule, but by Order IV., Rule 1, *ante*, p. 167, the plaintiff's address must be indorsed on the writ.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, declare forthwith the names and places of residence of all the persons constituting the firm. And if the plaintiffs or their solicitor shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a Judge may direct. And when the names of the partners

Order VIII. are so declared, the action shall proceed in the same
Renewal of Writ. — manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all proceedings shall, nevertheless, continue in the name of the firm.

By Order XVI., Rule 10, *post*, p. 195, any party to an action in which partners *either sue or are sued* in the name of their firm may apply by summons for a statement of the names of the partners, to be furnished in such manner, and verified on oath or otherwise, as may be ordered.

As to proceedings by and against partners in the name of their firm generally, see note to Order IX., Rule 6, *post*. p. 176.

ORDER VIII.

RENEWAL OF WRIT.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to a Judge, or the District Registrar, for leave to renew the writ: and the Judge or Registrar, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 5, in Appendix A, Part I.; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

This rule introduces two important changes. On the one hand, a writ of summons has hitherto been in force, unless renewed, only for six months (C. L. P. Act, 1852, s. 11); whereas under this rule it will continue current for twelve months. On the other hand, the writ, if not served, might, as of right, during its currency, be renewed for six months from the date of renewal, and so on from time to time during the currency of the renewed writ; so as to keep the

action alive without service, and thereby defeat the statute of limitations for an indefinite time (*ibid*); whereas under this rule a writ can only be renewed by leave, if reasonable efforts have been made to serve the defendant, or for other good reason.

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Service of
Writ of
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2. The production of a writ of summons purporting to be marked with the seal of the Court, showing the same to have been renewed in manner aforesaid shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

This rule is taken from s. 13 of the C. L. P. Act, 1852.

ORDER IX.

SERVICE OF WRIT OF SUMMONS.

1. *Mode of Service.*

1. No service of writ shall be required when the defendant, by his solicitor, agrees to accept service, and enters an appearance.

See Order XII., Rule 14, *post*, p. 183.

2. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or to a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service, as may seem just.

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As to the practice in obtaining an order for substituted service, see Order X., *post*, p. 183.

Substituted service has not hitherto been in use in the Common Law Courts. The equivalent practice has been that provided by s. 17 of the C. L. P. Act, 1852, under which if reasonable efforts had been made to effect service, and either the writ had come to the defendant's knowledge, or he wilfully evaded service, an order might be obtained to proceed as if personal service had been effected.

In Chancery, substituted service of a copy of the bill has been allowed, by leave of the Court, in all cases in which, under the older practice, substituted service of the subpoena might have been allowed; Cons. Orders, Order X., Rule 2. The cases decided upon this matter will be found in Morgan's Chancery Acts and Orders, at p. 419, 4th edit.

In Admiralty, by Admiralty Rules, 29th Nov. 1859, Rule 170, substituted service of a citation in personam might be allowed, or service dispensed with altogether, where personal service could not be effected.

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Service of
Writ of
Summons.
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In Probate cases, by Rules, Contentious Business, 1862, Rules 18, 19, citations might be served within Great Britain or Ireland, if personal service could not be effected, as the judge or registrar directed. Out of the United Kingdom, they might be served by advertisement, under like directions.

The new rule gives in terms a very wide discretion to the Courts, for it allows substituted service to be ordered if, from any cause, the plaintiff is unable to effect prompt personal service.

2. *On particular Defendants.*

3. When husband and wife are both defendants to the action, service on the husband shall be deemed good service on the wife, but the Court or a Judge may order that the wife shall be served with or without service on the husband.

4. When an infant is a defendant to the action, service on his or her father or guardian, or if none, then upon the person with whom the infant resides or under whose care he or she is, shall, unless the Court or Judge otherwise order, be deemed good service on the infant; provided that the Court or Judge may order that service made or to be made on the infant shall be deemed good service.

5. When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he or she is, shall, unless the Court or Judge otherwise orders, be deemed good service on such defendant.

3. *On Partners and other Bodies.*

6. Where partners are sued in the name of their firm, the writ shall be served either upon any one or more of the partners or at the principal place within the jurisdiction of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and, subject to the Rules hereinafter contained, such service shall be deemed good service upon the firm.

The power given by these rules to partners to sue and be sued in the name of their firm is entirely new. The system adopted for giving effect to the change is shortly as follows:—

Power to partners to sue and be sued in the name of the firm is given by Order XVI., Rule 10 (*post*, p. 195).

If partners are suing in the name of the firm they must, on demand of the defendant, disclose the names of the partners. (Order VII., Rule 2, *ante*, p. 173).

ORDER IX.—SERVICE OF WRIT OF SUMMONS.

4. Where one person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the firm name, the writ may be served at the principal place within the jurisdiction of the business so carried on upon any person having at the time of service the control or management of the business there; and, subject to any of the Rules of the Supreme Court, such service shall be deemed good service on the person so sued.

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or against any person admitted or adjudged to be a partner, or against any person served as a partner with the writ who has failed to appear. If the judgment creditor claims to be entitled to issue execution against any one else as a partner in the firm, he may apply for an order to that effect, and an issue may be directed to try the question.

As to service upon corporations, whether English or foreign, see the next rule.

7. Whenever, by any statute, provision is made for service of any writ of summons, bill, petition, or other process upon any corporation, or upon any hundred, or the inhabitants of any place, or any society or fellowship, or any body or number of persons, whether corporate or otherwise, every writ of summons may be served in the manner so provided.

By the C. L. P. Act, 1852, s. 16, "Every such writ of summons issued against a corporation aggregate, may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation; and every such writ issued against the inhabitants of a hundred or other like district, may be served on the high constable thereof, or any one of the high constables thereof; and every such writ issued against the inhabitants of any county of any city or town, or the inhabitants of any franchise, liberty, city, town or place not being part of a hundred or other like district, on some peace officer thereof."

It has been held that a foreign corporation having a place of business and trading in England may be sued in this country, and served in the manner pointed out in this section, the officer in England being for this purpose a head officer; *Newby v. Van Oppen*, Law Rep., 7 Q. B. 293; see also per Lord St. Leonards in *The Carron Iron Company v. MacLaren*, 5 H. L. C., at p. 459. But service on a mere booking clerk of a Scotch railway company at a station on an English railway over which they had running powers was held insufficient in *Mackereth v. Glasgow and South Western Railway Company*, Law Rep., 8 Ex. 149.

By the Companies Act, 1862 (25 & 26 Vict., c. 89), s. 62, "Any summons, notice, order, or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company, at their registered office."

Order IX.
Service of
Writ of
Summons.

Under somewhat similar words in 19 & 20 Vict. c. 47, s. 53, it was held that they did not include a writ of summons in an action; *Towne v. London and Limerick Steamship Company*, 5 C. B., N. S., 730. But it seems never to have been doubted that a Bill in Chancery might be served under this section; 1 Daniell's Chancery Practice, p. 368, 5th edit.; Morgan's Chancery Acts and Orders, p. 418, n., 4th edit.; and that will be sufficient to import the section into the above rule.

Similar provisions are contained in the Companies' Clauses Act, 1845 (8 Vict., c. 16), s. 135; the Lands' Clauses Act, 1845 (8 Vict., c. 18), s. 134, with respect to service upon promoters; the Railways' Clauses Act, 1845 (18 Vict., c. 20), s. 138, as to railway companies, except that in all these cases writs are specially mentioned.

By 7 Will. IV. & 1 Vict. c. 73, s. 26, service upon a company chartered under that Act, may be made upon the clerk of the company, or by leaving the writ at the head office, or, if the clerk shall not be known or found, on any agent or officer employed by the company, or by leaving the writ at the usual place of abode of such agent or officer.

4. *In Particular Actions.*

8. Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property.

This rule is taken from s. 170 of the C. L. P. Act, 1852.

9. In Admiralty actions in rem, the writ shall be served by the Marshal or his substitutes, whether the property to be arrested be situate within the Port of London or elsewhere within the jurisdiction of the Court, and the solicitor issuing the writ shall, within six days from the service thereof, file the same in the registry from which the writ issued.

10. In Admiralty actions in rem, service of a writ of summons against ship, freight, or cargo on board is to be effected by the Marshal or his officer nailing or affixing the original writ for a short time on the main mast or on the single mast of the vessel, and, on taking off the process, leaving a true copy of it nailed or fixed in its place.

11. If the cargo has been landed or transhipped, service of the writ of summons to arrest the cargo and freight shall be effected by placing the writ for a short time on the cargo, and on taking off the process by leaving a true copy upon it.

12. If the cargo be in the custody of a person who will not permit access to it, service of the writ may be made upon the custodian.

*Generally.*Order X.
Substituted
Service.

13. The person serving a writ of summons shall, within three days at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made.

This Rule is identical with s. 153 of the C. L. P. Act, 1852.

Does not apply to Substituted Service 3 Ch. D. 512

ORDER X.

SUBSTITUTED SERVICE.

Every application to the Court or a Judge, under Order IX., Rule 2, for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

As to when substituted service may be ordered, see Order IX., Rule 2, *ante*, p. 175.

ORDER XI.

SERVICE OUT OF THE JURISDICTION.

*1 Ch. D. 277
3 Ch. D. 245 -*

1. Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge whenever the whole or any part of the subject matter of the action is land or stock, or other property situate within the jurisdiction, or any act, deed, will, or thing affecting such land, stock, or property, and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, was made or entered into within the jurisdiction, and whenever there has been a breach within the jurisdiction of any contract wherever made, and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within the jurisdiction.

2 C.P.D. 24

Order XI.
Service out
of the Juris-
diction.

Under Order X., Rule 7, of the Consolidated Orders, the Court of Chancery has had a discretionary power to order service on a defendant out of the jurisdiction in any suit whatever, without any of the qualifications expressed in this rule; *Drummond v. Drummond*, Law Rep. 2 Ch., 32; Morgan's Chancery Acts and Orders, p. 423, 4th Edit.

In the Common Law Courts, the power of serving a defendant out of the jurisdiction has been governed by ss. 18 & 19 of the C. L. P. Act, 1852, the former of these sections relating to British subjects resident abroad, the latter to foreigners. Those sections were limited in their operation in two respects. First, they applied only to the case of persons residing elsewhere than in Scotland or Ireland: This restriction seems to be quite got rid of by the above rule. Secondly, proceedings upon a writ served abroad could only be continued if there was "a cause of action, which arose within the jurisdiction, or in respect of the breach of a contract made within the jurisdiction." The words, "cause of action *which arose within the jurisdiction*," gave rise to a remarkable conflict of decision between the several Courts, only recently set at rest. See *Siehl v. Borch*, 2 H. & C. 954; *Allhuser v. Maljarejo*, Law Rep. 3 Q. B. 340; *Jackson v. Spittall*, Law Rep., 5 C. P. 542; *Durham v. Spence*, Law Rep., 6 Ex. 46; *Cherry v. Thompson*, Law Rep., 7 Q. B. 573; *Vaughan v. Weldon*, Law Rep., 10 C. P. 47. The words of the present rule seem sufficiently wide to cover all the cases as to which doubt has arisen.

In the Probate Court, under Rule 19 of the Rules for Contentious Business, 1862, the practice has been to allow service of citations on persons abroad by advertisement, under the directions of the judge or registrars, unless personal service were ordered. But if a person abroad had an agent in this country, the agent was served.

As regards the practice in case of service abroad, in Chancery the leave of the Court has hitherto been obtained, and a time for appearance has been limited by order; Consolidated Orders, Order X. Rule 7. And in the Probate Court, service on a person abroad has been under the direction of the judge or registrars.

The Common Law practice has been entirely different. Under ss. 18 and 19 of the C. L. P. Act, 1852, above referred to, a writ for service abroad, commonly known as a foreign writ, has been issued, and it has been served or notice of it given, as of course, without any leave obtained, the plaintiff on his own responsibility inserting a reasonable time for the defendant's appearance. The defendant when served might take no notice of the writ, or, without appearing, might apply to have it set aside if improperly issued, or might appear. If he appeared, the action proceeded in the ordinary course. If he did not appear, and the writ had not been set aside, the plaintiff applied for leave to proceed with the action, notwithstanding the want of appearance, which leave might be given if everything was in order.

Under the above rule leave must in every case be obtained beforehand, and the order giving such leave must limit the time for appearance. (Order II., Rules 4 and 5, *ante*, p. 160, and the above Rules).

Hitherto the practice in Chancery has been to serve a copy of the bill upon the defendant abroad, without regard to his being or not being a British subject. The Common Law practice has been to serve the writ upon a British subject, but to give notice of it to a foreigner. The present rules seem to contemplate the adoption of the Common Law practice in this respect.

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RULES.

These Rules may be cited as "The Rules of the Supreme Court, June, 1876," or each separate one of these may be cited as if it had been one of "The Rules of the Supreme Court," and had been numbered by the Order and Rule mentioned in the margin.

ORDER II.—WRIT OF SUMMONS AND PROCEDURE.

ORDER XI.—SERVICE OUT OF THE JURISDICTION.

Order XI.,
Rule 1a.

me 1876

5. Whenever any action is brought in respect of any contract which is sought to be enforced or rescinded, dissolved, annulled, or otherwise affected in any such action, or for the breach whereof damages or other relief are or is demanded in such action, when such contract was made or entered into within the jurisdiction, or whenever there has been a breach within the jurisdiction of any contract wherever made, the Judge, in exercising his discretion as to granting leave to serve such writ or notice on a defendant out of the jurisdiction, shall have regard to the amount or value of the property in dispute or sought to be recovered, and to the existence in the place of residence of the defendant, if resident in Scotland or Ireland, of a local Court of limited jurisdiction, having jurisdiction in the matter in question, and to the comparative cost and convenience of proceeding in England or in the place of such defendant's residence, and in all the above-mentioned cases no such leave is to be granted without an affidavit stating the particulars necessary for enabling the Judge to exercise his discretion in manner aforesaid, and all such other particulars (if any) as he may require to be shown.

Serious difficulties have arisen in the Common Law Courts with respect to proceeding against foreign corporations situated abroad. It was held that s. 19 of the C. L. P. Act, 1852, which provided for service upon persons residing abroad, not being British subjects, did not apply to corporations abroad; *Ingate v. Austrian Lloyds*, 4 C. B., N. S., 704. See also *Armstrong v. Die Elbinger Gesellschaft*, 23 W. R. 94. But this decision turned entirely upon the construction of the particular Act in question. And there seems nothing in the words of the present rules to limit their operation to the case of natural persons, unless the words "British subject" in Rule 3 create a difficulty.

As to the mode of service upon foreign corporations having a place of business in England, see note to Order IX., Rule 7, *ante*, p. 177.

2. In probate actions service of a writ of summons or notice of a writ of summons may by leave of the Court or Judge be allowed out of the jurisdiction.

3. Every application for an order for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by evidence, by affidavit, or otherwise, showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made.

4. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given.

5. Notice in lieu of service shall be given in the manner in which writs of summons are served.

ORDER XII.

APPEARANCE.

1. Except in the cases otherwise provided for by these rules a defendant shall enter his appearance in London.

As to the general effect of the rules in this schedule upon the place of proceeding in actions, see note to Order V., Rule 1, *ante*, p. 168.

2. If any defendant to a writ issued in a district registry resides or carries on business within the district, he shall appear in the district registry.

Order XII.
Appearance.

3. If any defendant neither resides nor carries on business in the district, he may appear either in the district registry or in London.

4. If a sole defendant appears, or all the defendants appear in the district registry, or if all the defendants who appear, appear in the district registry and the others make default in appearance, then, subject to the power of removal hereinafter provided, the action shall proceed in the district registry.

As to the power of removal, see note to Order V., Rule 1, *ante*, p. 168; s. 65 of the Judicature Act, 1873, *ante*, p. 90; and Order XXXV., Rules 11 to 14, *post*, p. 246.

5. If the defendant appears, or any of the defendants appear, in London, the action shall proceed in London; provided that if the Court or a Judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or Judge may order that the action may proceed in the district registry, notwithstanding such appearance in London.

6. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing, dated on the day of the delivering the same, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. A defendant who appears elsewhere than where the writ is issued shall on the same day give notice to the plaintiff of his appearance, either by notice in writing served in the ordinary way, or by prepaid letter posted on that day in due course of post.

The necessity for the latter clause of this rule arises in this way:—The defendant being, under Rule 3, entitled, if the writ is issued in a District Registry, and he neither resides nor carries on business in the district, to appear either in the District Registry or in London, the plaintiff, but for the above provision, could not enter judgment by default without searching for appearance both in London and in the District Registry. Under the above rule he need only search in the District Registry, for if the appearance be in London he is entitled to notice.

7. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar, and if the

2 and 3 in Part 1 of Appendix A to "The ^{Order II,}
Supreme Court" shall be read as if the words ^{Rule 3 (a).}
of the Court or a Judge" were not therein.

ORDER V.—ISSUE OF WRITS OF SUMMONS.

Following words are hereby added to the end ^{Order V,}
of Rule 8, of "The Rules of the Supreme ^{Rule 8.}

ORDER XII. — APPEARANCE.

Order XII.,
Rule 12a.

June
1876

6. Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he shall appear in his own name ; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district. Order XII.
Appearance.
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As to the district of a District Registry, see s. 60 of the principal Act, *ante*, p. 88; and Order in Council issued under that section. *post*, p. 418.

8. A defendant appearing in person shall state in such memorandum his address, and, if the appearance is entered in the London office, a place, to be called his address for service, which shall not be more than three miles from Temple Bar, and if the appearance is entered in a district registry, a place, to be called his address for service, which shall be within the district.

9. If the memorandum does not contain such address it shall not be received; and if any such address shall be illusory or fictitious, the appearance may be set aside by the Court or a Judge on the application of the plaintiff.

10. The memorandum of appearance shall be in the Form No. 6, Appendix (A), Part I., with such variations as the circumstances of the case may require.

11. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the cause book.

12. Where partners are sued in the name of their firm, they shall appear individually in their own names. But all subsequent proceedings shall, nevertheless, continue in the name of the firm.

As to the general effect of the rules in the schedule upon actions by and against partners, see note to Order IX., Rule 6, *ante*, p. 176.

13. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum.

This is identical with Rule 2, of R. G., H. T., 1853.

14. A solicitor not entering an appearance in pursuance of his written undertaking so to do on behalf of any defendant shall be liable to an attachment.

This is identical with Rule 3 of R. G., H. T., 1853. See Order IX., Rule 1, *ante*, p. 175.

Order XII.
Appearance.

15. A defendant may appear at any time before judgment. If he appear at any time after the time limited for appearance he shall, on the same day, give notice thereof to the plaintiff's solicitor, or to the plaintiff himself if he sues in person, and he shall not, unless the Court or a Judge otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.

This Rule is in substance the same as s. 29 of the C. L. P. Act, 1852.

16. In probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased.

17. In an Admiralty action in rem any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the res under arrest, or in the fund in the registry.

18. Any person not named as a defendant in a writ of summons for the recovery of land may by leave of the Court or Judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or his tenant.

This and the three following rules are substantially the same as ss. 172, 173 and 174 of the C. L. P. Act, 1852, and Rule 113 of R. G., H. T., 1853.

19. Any person appearing to defend an action for the recovery of land as landlord in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

20. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court or Judge to appear and defend, he shall enter an appearance according to the foregoing rules, intituled in the action against the party or parties named in the writ as defendant or defendants, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

21. Any person appearing to a writ of summons for

the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance or in a notice intituled in the cause, and signed by him or his solicitor; such notice to be served within four days after appearance; and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole.

Order XIII.
Default of
Appearance.

22. The notice mentioned in the last preceding Rule may be in the form No. 7 in Part I. of Appendix (A) hereto, with such variations as circumstances may require.

ORDER XIII.

DEFAULT OF APPEARANCE.

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff may apply to the Court or a Judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or Judge at the time of hearing such application shall dispense with such last-mentioned service.

As to service on infants and persons of unsound mind, see Order IX., Rules 4 and 5, *ante*, p 176.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following rules of this order, or under Order XV., Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

Order XIII.
Default of
Appearance.

3. In case of non-appearance by the defendant where the writ of summons is specially indorsed, under Order III., Rule 6, the plaintiff may sign final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified, if any, to the date of the judgment, and a sum for costs, but it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just.

The indorsement referred to is an indorsement of the claim where the claim is merely for a debt or liquidated demand.

This rule corresponds to s. 27 of the C. L. P. Act, 1852. Under that section, however, execution could not issue on the judgment entered till the expiration of eight days from the last day for appearance. There is no such restriction in this rule. And the general rule now is that execution may issue immediately upon any judgment for the recovery of money; Order XLII., Rule 15, *post*, p. 276.

Under that section, too, it was expressly provided that an application to set aside a judgment must be based upon affidavits "accounting for the non-appearance and disclosing a defence upon the merits." By the present rule, the matter is left at large to the discretion of the Court or judge, but it can hardly be supposed that a judge will set aside a judgment without having the non-appearance explained and a defence shown. The terms commonly imposed have been the payment by the defendant of the costs of the application, pleading without delay, and sometimes bringing money into court.

4. Where there are several defendants to a writ specially indorsed for a debt or liquidated demand in money, under Order III., Rule 6, and one or more of them appear to the writ, and another or others of them do not appear, the plaintiff may enter final judgment against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with his action against such as have appeared.

The provisions of this rule are new. Hitherto in such a case, the plaintiff might sign judgment against the defendants who did not appear, and might issue execution against them; but, if he did so, he abandoned his right to proceed against the other defendants. Or he might, before levying execution against the defaulters, declare and proceed with the action against the other defendants. But in this case the judgment already signed became a mere interlocutory one; and the plaintiff could never put it in force unless and until he succeeded in obtaining judgment in the action against the other defendants. See s. 33 of the C. L. P. Act, 1852; notes to that section in Day's Common Law Procedure Acts p. 67, 4th edit.; 2 Chitty's Archbold, p. 972, 11th edit.

5. Where the defendant fails to appear to the writ of summons and the writ is not specially indorsed, but the plaintiff's claim is for a debt or liquidated demand only, no statement of claim need be delivered, but the plaintiff may file an affidavit of service or notice in lieu of service,

as the case may be, and a statement of the particulars of his claim in respect of the causes of action stated in the indorsement upon the writ, and may, after the expiration of eight days, enter final judgment for the amount shown thereby and costs to be taxed, provided that the amount shall not be more than the sum indorsed upon the writ besides costs.

Order XIII.
Default of
Appearance.
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Under s. 28 of the C. L. P. Act, 1852, the plaintiff filed a declaration, and if no plea were pleaded he could then, if the amount claimed were indorsed on the writ, sign final judgment for default of a plea for the amount so shown and costs.

6. Where the defendant fails to appear to the writ of summons and the plaintiff's claim is not for a debt or liquidated demand only, but for detention of goods and pecuniary damages, or either of them, no statement of claim need be delivered, but interlocutory judgment may be entered and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way in which any question arising in an action may be tried.

The practice hitherto has been, under s. 28 of the C. L. P. Act, 1852, that the plaintiff, in the case provided for by this rule, filed a declaration, and then, if no plea were pleaded, signed interlocutory judgment for want of a plea. Then a writ of inquiry issued to assess the damages; or if the amount of damages was substantially a matter of mere calculation, it might be referred to a master, under s. 94 of the C. L. P. Act, 1852. Under the present rule, it will be observed, interlocutory judgment may be entered immediately upon default of appearance; and the indorsement on the writ will be sufficient to govern the inquiry as to damages without any pleadings.

A far more important change is made by the last sentence of this rule. The assessment of damages often involves questions both of law and of fact as difficult as any that can possibly arise. It may be found of great advantage that, for the future, questions of damages may be ordered to be tried by a judge or a judge and jury, or a judge with assessors, or a referee, official or special. See Order XXXVI., *post*, p. 248.

7. In case no appearance shall be entered in an action for the recovery of land, within the time limited for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

This is in substance the same as s. 177 of the C. L. P. Act, 1852

Order XIII.
Default of
Appearance.

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract, upon a writ for the recovery of land, he may enter judgment as in the last preceding Rule mentioned for the land; and may proceed as in the other preceding Rules of this order as to such other claim so indorsed.

No claim other than those mentioned in this rule can be joined with a claim for the recovery of land, without leave; Order XVII., Rule 2, *post*, p. 201.

9. In actions assigned by the 34th section of the Act to the Chancery Division, and in Probate actions, and in all other actions not by the Rules in this order otherwise specially provided for, in case the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service the action may proceed as if such party had appeared. *10th. 784. 624*

The effect of this rule is to get rid entirely of the practice hitherto in use in Chancery of entering an appearance for any party in default. For the future, instead of such appearances being entered and so all parties being formally before the Court, the action will, upon an affidavit of service (Rule 2, *supra*), proceed as if all parties had appeared.

10. In an Admiralty action in rem, in which an appearance has not been entered, the plaintiff may proceed as follows:—

(*a.*) He may, after the expiration of twelve days from the filing of the writ of summons, take out a notice of sale, to be advertised by him in two or more public journals to be from time to time appointed by the judge.

(*b.*) After the expiration of six days from the advertisement of the notice of sale in the said journals, if an appearance has not been entered, the plaintiff shall file in the registry an affidavit to the effect that the said notices have been duly advertised, with copies of the journals annexed, as also such proofs as may be necessary to establish the claim, and a notice of motion to have the property sold.

(*c.*) If, when the motion comes before the Judge, he is satisfied that the claim is well founded he may order the property to be appraised and sold, and the proceeds to be paid into the registry.

(*d.*) If there be two or more actions by default pending against the same property, it shall not be necessary to take out a notice of sale in more than one of the actions; but

if the plaintiff in the first action does not, within eighteen days from the filing of the writ in that action, take out and advertise the notice of sale, the plaintiff in the second or any subsequent action may take out and advertise the notice of sale, if he shall have filed in the registry a writ of summons in rem in such second or subsequent action.

Order XIV.
Leave to
Defend.

(e.) Within six days from the time when the proceeds have been paid into the registry, the plaintiff in each action shall, if he has not previously done so, file his proofs in the registry and have the action placed on the list for hearing.

(f.) In an action of possession, after the expiration of six days from the filing of the writ, if an appearance has not been entered, the plaintiff may, on filing in the registry a memorandum, take out a notice of proceeding in the action, to be advertised by him in two or more public journals to be from time to time appointed by the Judge.

(g.) After the expiration of six days from the advertisement of the notice of proceeding in the said journals, if an appearance has not been entered, the plaintiff shall file in the registry an affidavit to the effect that the notice has been duly advertised with copies of the journals annexed, as also such proofs as may be necessary to establish the action, and shall have the action placed on the list for hearing.

(h.) If when the action comes before the Judge he is satisfied that the claim is well founded, he may pronounce for the same, and decree possession of the vessel accordingly.

ORDER XIV.

LEAVE TO DEFEND WHERE WRIT SPECIALLY INDORSED.

1. Where the defendant appears on a writ of summons specially indorsed, under Order III., Rule 6, the plaintiff may, on affidavit verifying the cause of action, and swearing that in his belief there is no defence to the action, call on the defendant to show cause before the Court or a Judge why the plaintiff should not be at liberty to sign final judgment for the amount so indorsed, together with interest, if any, and costs; and the Court or Judge may, unless the defendant, by affidavit or otherwise, satisfy the Court or Judge that he has a good defence to the action

*Repealed
May 1977*

Order XIV. on the merits, or disclose such facts as the Court or Judge
 Leave to may think sufficient to entitle him to be permitted to
 Defend. defend the action, make an order empowering the plaintiff
 — to sign judgment accordingly.

The indorsement referred to is an indorsement of particulars of the claim where the claim is merely for a debt or liquidated demand.

The procedure introduced by this order is an extension of the principle embodied in the Bills of Exchange Act, 1855, though the method of working it out is different. Under the Bills of Exchange Act [*ante*, p. 160] a defendant, whose case falls within the Act and who is served with a writ in the proper form, must obtain the leave of a judge before he can be allowed to appear and defend. The present order is of much wider application than the Bills of Exchange Act, for it applies in all cases where the plaintiff's claim is merely for a debt or liquidated demand, and the writ has been specially indorsed [Order III., Rule 6, *ante*, p. 166]. Under this order the defendant appears as of right without any previous leave. And it lies upon the plaintiff to apply for an order for judgment notwithstanding appearance. As to the time for delivering a defence in such cases, see Order XXII., Rule 3, *post*, p. 218.

There is no express provision in the rules as to whether a plaintiff can proceed under this rule after the defendant has obtained leave to defend under the Bills of Exchange Act. But it can hardly be supposed that an order would be made under this rule in such a case.

2. The application by the plaintiff for leave to enter final judgment under the last preceding Rule shall be made by summons returnable not less than two clear days after service.

No time is limited by rule within which the plaintiff must make the application. It may be presumed, however, that such application will not be entertained unless made at an early opportunity.

3. The defendant may show cause against such application by offering to bring into Court the sum indorsed on the writ, or by affidavit. In such affidavit he shall state whether the defence he alleges goes to the whole or to part only, and if so, to what part, of the plaintiff's claim. And the Judge may, if he think fit, order the defendant to attend and be examined upon oath; or to produce any books or documents or copies of or extracts therefrom.

The grounds given in this rule and in Rule 1 for allowing the defendant to defend are :—an offer to bring the amount into Court; satisfying the judge that he has a good defence on the merits; disclosing such facts as the judge thinks sufficient to entitle him to defend.

The facts are to be shown by affidavit subject to the power of directing an oral examination or the production of books or documents.

As to the grounds on which a defence is allowed in the analogous case, under the Bills of Exchange Act, see *ante*, p. 164.

4. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim ; or that any part of his claim is admitted to be due ; the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into Court by the sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

Order XV.
Application
for Account.
—

5. If it appears to the Judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former.

See Order XIII., Rule 4, *ante*, p. 186.

6. Leave to defend may be given unconditionally or subject to such terms as to giving security, or otherwise, as the Court or a Judge may think fit.

ORDER XV.

APPLICATION FOR ACCOUNT WHERE WRIT INDORSED UNDER ORDER III., RULE 8.

1. In default of appearance to a summons indorsed under Order III., Rule 8, and after appearance unless the defendant, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the account claimed, with all directions now usual in the Court of Chancery in similar cases, shall be forthwith made.

The indorsement referred to is an indorsement of a claim for an ordinary account, such as a partnership, or executorship, or ordinary trust account.

There have been a large number of cases hitherto in the Court of Chancery, in which an account is asked for, and in which, in the absence of some exceptional circumstances, the plaintiff is entitled to

Order XVI. and obtains an order for an account as a matter of course. But
Parties. hitherto there has been no summary process by which such an order
— could be quickly and cheaply obtained. This rule provides for two
cases : first, default of appearance, in which case the order will be
made as of right ; secondly, appearance, in which case it is to be made
unless the defendant shows that there is some question which ought
to be tried first.

2. An application for such order as mentioned in the last preceding Rule shall be made by summons, and be supported by an affidavit filed on behalf the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

An affidavit of service must be filed before the application can be made on the ground of default of appearance ; Order XIII., Rule 2, *ante*, p. 185.

ORDER XVI.

PARTIES.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person or persons who shall not be found entitled to relief, unless the Court in disposing of the costs of the action shall otherwise direct.

The changes introduced by this and the following rules of this Order are very material changes. In nothing has there been a stronger contrast between Common Law and Chancery procedure than in their doctrines with respect to the parties who ought to be brought before the Court.

Subject to a few exceptions, the Common Law Courts have been rigidly tied down to disposing of claims arising between exactly the same parties upon each side, and in the same rights. They could give a judgment for *A.* against *C.*, or against *C.*, *D.* and *E.* but they could not give relief of one sort against *C.* and of another sort against *D.* and *E.* ; nor could they give relief of one kind to *A.* and of another kind to *B.*, or of one kind to *A.* and *B.* jointly, and another to *A.* separately. All the plaintiffs, if more than one, had to be jointly entitled, and all the defendants jointly liable with respect to every single matter upon which the Court was asked to adjudicate.

In Chancery, on the other hand, the course has been to deal with the controversy or transaction forming the subject matter of the

action as a whole, and endeavour to do complete justice with respect to it; and for that object the Court has insisted on bringing before it all the parties interested in the subject matter. The extreme strictness of this rule has been usefully relaxed from time to time in ways which, at this point, it is not necessary to specify; but in the main it has not been departed from.

Order XVI.
Parties.

The result has been that a Court of Law could not handle the matter, as a whole, however desirable it might be to do so; but was obliged to confine itself to the specific claim of one person against another. A Court of Equity could only deal with the matter as a whole, whether that were really necessary or not, and could not dispose of the mutual rights of particular persons singly, however convenient it might be to do so.

The Judicature Act, 1873, and the rules of this schedule give a very wide latitude as to the matters which may be disposed of in an action, the mode in which a cause may be dealt with, and the persons who may be made parties to it.

By s. 24 of the Judicature Act, 1873, *ante*, p. 57, the plaintiff may seek in any action to enforce any claim he could hitherto have enforced in any Court whether of law or equity. The defendant may raise any defence which would hitherto have been good either at law or in equity. He may also raise by way of counter claim, not merely a pecuniary set off, but anything that he could have made the subject of a cross action or suit. And he may make such counter claim not only against the plaintiff, but against any third person, if only it be connected with the subject of the action.

The Court in its turn is bound to "grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided."

On the other hand, the first clause of Rule 13, *post*, p. 197, is equally specific, that "no action shall be defeated by reason of the misjoinder of parties, and the Court may in every action deal with the matters in controversy so far as regards the rights and interests of the parties actually before it."

The provisions directly relating to the selection of parties and the joinder of various claims in the same action and in the same pleadings are framed so as to give effect to the provisions just referred to.

All persons claiming *any* relief, *jointly, severally, or in the alternative*, may be made plaintiffs; Rule 1, *supra*, and Order XVII., Rule 6, *post*, p. 202.

All persons against whom *any* relief is claimed, *jointly, severally, or in the alternative*, may be made defendants; Rule 3, *post*, p. 194. And the defendants need not all be interested in all the relief claimed or all the causes of action; Rule 4. See also Rules 5 and 6, *post*, p. 194.

It is not necessary that either plaintiffs or defendants should be concerned in all the matters in question in the same capacity. Subject to a few qualifications, they may be concerned partly in a representative capacity, partly personally; Order XVII., Rules 3, 4, 5, 6, *post*, p. 201.

The defendant also may, for the purpose of his counter-claim, bring

Order XVI. before the Court any persons not already parties against whom he seeks any relief relating to or connected with the subject matter of the suit; s. 24, sub-s. 3 of the Judicature Act, 1873. See Order XIX., Rule 3, *post*, p. 205, and note thereto.

All parties may be added necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action; Rule 13, *post*, p. 197.

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the Court or a Judge may, if satisfied that it has been so commenced through a bonâ fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as may seem just.

It has often happened that actions have been inadvertently brought by the wrong person, as by *cestui que trust* instead of trustee, by mortgagor instead of mortgagee. Often the same mistake has been made, where it was matter of real difficulty to say which of two persons ought to sue; as in the case of contracts made by agents, as to which it is often a question of much nicety to determine who ought to sue. Though the Common Law Courts have had the largest powers of adding parties, or amending misdescriptions of parties, they have had no power to substitute one plaintiff for another, such as this rule confers: see *De Gendre v. Bogardus*, Law Rep., 7 C. P. 409.

3. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

See note to Rule 1, *ante*, p. 192.

4. It shall not be necessary that every defendant to any action shall be interested as to all the relief thereby prayed for, or as to every cause of action included therein; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in such action in which he may have no interest.

See note to Rule 1, *ante*, p. 192.

5. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes.

See note to Rule 1, *ante*, p. 192.

not in the
3 Ch. D. 277

4 Ch. D. 413

2 Sic. D. 301
4 Ch. D. 432
324. D. 695

34. D. 359

ORDER XVI.—PARTIES. *June 1876*

Order XVI.,
Rule 9a.

7. In any case in which the right of an heir-at-law or the next of kin or a class shall depend upon the construction which the Court may put upon an instrument, and it shall not be known or be difficult to ascertain who is or are such heir-at-law or next of kin or class, and the Court shall consider that in order to save expense or for some other reason it will be convenient to have the question or questions of construction determined before such heir-at-law, next of kin, or class shall have been ascertained by means of inquiry or otherwise, the Court may appoint some one or more person or persons to represent such heir-at-law, next of kin, or class, and the judgment of

the Court in the presence of such person or persons shall be binding upon the party or parties or class so represented.

COURT.—

“And when such action shall be commenced in a district registry, it shall be further distinguished by the name of such registry.”

ORDER IX.—SERVICE OF WRIT OF SUMMONS.

4. Where one person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the firm name, the writ may be served at the principal place within the jurisdiction of the business so carried on upon any person having at the time of service the control or management of the business there; and, subject to any of the Rules of the Supreme Court, such service shall be deemed good service on the person so sued.

final judgment shall be entered in the District Registry unless the Court or Judge shall otherwise order.

Where an action proceeds in the District Registry

6. Wherein any action, whether founded upon contract or otherwise, the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that in such action the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties to the action.

Order XVIII
Parties.

4 Cl. D. 432
2 Cl. D. 301. 501.
D. 695

See note to Rule 1, *ante*, p. 192.

7. Trustees, executors, and administrators may sue and be sued on behalf of, or as representing the property or estate of which they are trustees or representatives, without joining any of the parties beneficially interested in the trust or estate, and shall be considered as representing such parties in the action; but the Court or a Judge may, at any stage of the proceedings, order any of such parties to be made parties to the action, either in addition to, or in lieu of, the previously existing parties thereto.

This Rule appears to be substantially the same as Rule 9 of 15 & 16 Vict. c. 86, s. 42, embodied in Rule 11 of this Order, *post*, p. 216.

8. Married women and infants may respectively sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of this Act; and infants may, in like manner, defend any action by their guardians appointed for that purpose. Married women may also, by the leave of the Court or a Judge, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the Court or a Judge may require.

9. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorised by the Court to defend in such action, on behalf or for the benefit of all parties so interested.

12. B. D. 313
14. D. 691: 2 ib. 100

This has long been the practice of the Court of Chancery.

10. Any two or more persons claiming, or being liable as co-partners, may sue or be sued in the name of their respective firms, if any; and any party to an action may in such case apply by summons to a Judge for a statement of the names of the persons who are co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct.

As to proceedings in actions by and against partners in the name of the firm, see Order VII., Rule 2, *ante*, p. 173; Order IX., Rule 6, *ante*, p. 176, and note thereto; Order XII., Rule 12, *ante*, p. 183; Order XLII., Rule 8, *post*, p. 274.

Order XVI.
Parties.

11. Subject to the provisions of the Act, and these Rules, the provisions as to parties, contained in s. 42 of 15 & 16 Vict. c. 86, shall be in force as to actions in the High Court of Justice.

By 15 & 16 Vict. c. 86, s. 42, it is enacted that : "It shall not be competent to any defendant in any suit in the said Court [that is, the Court of Chancery] to take any objection for want of parties to such suit, in any case to which the rules next hereinafter set forth extend ; and such rules shall be deemed and taken part of the law and practice of the said Court, and any law or practice of the said Court inconsistent therewith shall be and is hereby abrogated and annulled.

RULE 1.—Any residuary legatee or next of kin may, without serving the remaining residuary legatee or next of kin, have a decree for the administration of the personal estate of a deceased person.

RULE 2.—Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, may, without serving any other legatee or person interested in the proceeds of the estate, have a decree for the administration of the estate of a deceased person.

RULE 3.—Any residuary devisee or heir may, without serving any co-residuary devisee or co-heir have a like decree.

RULE 4.—Any one of several *cestuis que trust* under any deed or instrument may, without serving any other of such *cestuis que trust*, have a decree for the execution of the trusts of the deed or instrument.

RULE 5.—In all cases of suits for the protection of property pending litigation, and in all cases in the nature of waste, one person may sue on behalf of himself and of all persons having the same interest.

RULE 6.—Any executor, administrator, or trustee may obtain a decree against any one legatee, next of kin, or *cestui que trust* for the administration of the estate, or the execution of the trusts.

RULE 7.—In all the above cases the Court, if it shall see fit, may require any other person or persons to be made a party or parties to the suit, and may, if it shall see fit, give the conduct of the suit to such person as it may deem proper, and may make such order in any particular case as it may deem just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

RULE 8.—In all the above cases, the persons who, according to the present practice of the Court, would be necessary parties to the suits, shall be served with notice of the decree, and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suits, and they may, by an order of Court, have liberty to attend the proceedings under the decree ; and any party so served may, within such time as shall in that behalf be prescribed by the general order of the Lord Chancellor, apply to the Court to add to the decree.

RULE 9.—In all suits concerning real or personal estate which is vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors and administrators in suits concerning personal estate, represent the persons beneficially interested in such personal estate ; and in such cases it shall not be necessary to make the parties beneficially

final judgment shall be entered in such Registry, unless the Judge at the trial or the Court or a Judge shall otherwise order.

June 1876

8. Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm.

interested under the trusts parties to the suit ; but the Court may, upon consideration of the matter, on the hearing, if it shall so think fit, order such persons, or any of them, to be made parties.”

For cases decided upon this section, see Morgan's Chancery Acts and Orders, p. 197, 4th edit.

Compare with Rule 9 in the section cited, Rule 7 of the present order.

12. Subject as last aforesaid, in all Probate actions the rules as to parties, heretofore in use in the Court of Probate, shall continue to be in force. *P.D. 148*

13. No action shall be defeated by reason of the misjoinder of parties, and the Court may in every action deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the name or names of any party or parties, whether as plaintiffs or as defendants, improperly joined, be struck out, and that the name or names of any party or parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent thereto. All parties whose names are so added as defendants shall be served with a summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against them shall be deemed to have begun only on the service of such summons or notice.

As to the first clause of this section see note to Rule 1 of this order. As to the practice with respect to amendments under the latter part of the rule, see the following rules.

14. Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a Judge at any time before trial by motion or summons, or at the trial of the action in a summary manner.

This is in accordance with the practice of the Common Law Courts. In Chancery it takes the place of the common order to amend, but allows much greater freedom of amendment than could have been had under that order.

15. Where a defendant is added, unless otherwise ordered by the Court or Judge, the plaintiff shall file an

Order XVI. amended copy of and sue out a writ of summons, and
Parties. serve such new defendant with such writ or notice in lieu
of service thereof in the same manner as original
defendants are served.

16. If a statement of claim has been delivered previously to such defendant being added, the same shall, unless otherwise ordered by the Court or Judge, be amended in such manner as the making such new defendant a party shall render desirable, and a copy of such amended statement of claim shall be delivered to such new defendant at the time when he is served with the writ of summons or notice or afterwards, within four days after his appearance.

17. Where a defendant is or claims to be entitled to contribution or indemnity, or any other remedy or relief over against any other person, or where from any other cause it appears to the Court or a Judge that a question in the action should be determined not only as between the plaintiff and defendant, but as between the plaintiff, defendant, and any other person, or between any or either of them, the Court or a Judge may, on notice being given to such last-mentioned person, make such order as may be proper for having the question so determined.

This and the four following rules deal with cases in which questions arise in an action which it is important to have conclusively settled, not only as between the plaintiff and defendant, between whom they originally arise, but also between other persons. Their object is not to enable a defendant to obtain any actual present relief against the plaintiff, or against a third person. That subject is dealt with by s. 24, sub-s. 3 of the Act of 1873, and in Order XIX., Rule 3, *post*, p. 205, and Order XXII., Rules 5 to 10, *post*, p. 219. The rules now under consideration seem intended only to secure a binding decision, with a view to future relief.

Two cases are mentioned in the above rule :—

1st. Where a defendant claims to be entitled to contribution, indemnity, or other remedy or relief over against any other person.

In such cases it is obviously desirable, on the one hand, that the question of the defendant's liability to the plaintiff should be finally settled once for all, so that the decision should be binding as against the person from whom he seeks relief over. On the other hand, it is equally obvious that such person ought to have an opportunity of intervening in the action, and resisting the decision which is to bind him.

Three examples of this kind are given in the Form No. 1 in Appendix B, *post*, p. 327. The first is the case of an action against a surety, who claims contribution from another person as co-surety. The second, an action against the acceptor of a bill of exchange, who claims to be indemnified by another person on the ground that the bill was accepted for his accommodation. The third, an action on a

1 Q. B. 9. 419, 644
652,

4 Ch. D. 586

2. 18

R. 21

Rules 17, 18, 19 apply only to 3rd parties, not as
best: Indefinite: Sheppard v Beane 2 Ch. D. 223
No relief to be got under these rules: only 3rd party bound
151 2 Ch. D. 740

contract of sale, in which the defendant claims to be indemnified by another, on the ground that he made the contract as his agent. Order XVI. Parties.

2nd. The second case is where from any other cause it appears to the Court or a Judge that a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff and defendant and any other person, or between any or either of them.

Where contribution, indemnity, or other remedy or relief over is sought by a defendant against a person not already a party to the action, the procedure is governed by Rules 18, 20, and 21 of this order. Under those rules a notice is to be served upon him as a writ of summons would be served, informing him of the nature of the claim against the defendant, and the grounds on which indemnity, or as the case may be, is claimed from him, and calling upon him to appear in the action. If he omits to appear he will be bound by any judgment in the action against the defendant, whether it be by consent or otherwise. If he appears he may be allowed to defend the action.

In any other case the procedure will be governed by the Rule now under comment, and Rule 19 of this Order.

18. Where a defendant claims to be entitled to contribution, indemnity, or other remedy or relief over against any person not a party to the action, he may, by leave of the Court or a Judge, issue a notice to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a Judge, be served within the time limited for delivering his statement of defence. Such notice may be in the form or to the effect of the Form No. 1 in Appendix (B) hereto, with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action. 1 Ch. D. 176
2 Ch. D. 51

As to the service of writs, see Order IX., ante, p. 175.

19. When under Rule 17 of this order it is made to appear to the Court or a Judge at any time before or at the trial that a question in the action should be determined, not only as between the plaintiff and defendant, but as between the plaintiff and the defendant and any other person, or between any or either of them, the Court or a Judge, before or at the time of making the order for having such question determined, shall direct such notice to be given by the plaintiff at such time and to such person and in such manner as may be thought proper, and if made at the trial the Judge may postpone such trial as he may think fit.

Order XVI. Notice to the "other" person of the application for an order that
 Parties. the question in dispute shall be so determined, as that the determination shall be binding upon him, seems to be provided for by Rule 17. The notice which, under this rule, the *plaintiff* is to be ordered to give is presumably a notice of trial.

20. If a person not a party to the action, who is served as mentioned in Rule 18, desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, he must enter an appearance in the action within eight days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise. Provided always, that a person so served and failing to appear within the said period of eight days may apply to the Court or a Judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or a Judge shall think fit.

As to appearance see Order XII., *ante*, p. 181.

21. If a person not a party to the action served under these rules appears pursuant to the notice, the party giving the notice may apply to the Court or a Judge for directions as to the mode of having the question in the action determined; and the Court or Judge, upon the hearing of such application, may, if it shall appear desirable so to do, give the person so served liberty to defend the action upon such terms as shall seem just, and may direct such pleadings to be delivered, or such amendments in any pleadings to be made, and generally may direct such proceedings to be taken, and give such directions as to the Court or a Judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the person so served shall be bound or made liable by the decision of the question.

ORDER XVII.

JOINDER OF CAUSES OF ACTION.

Order XVII.
 Joinder of
 Causes of
 Action.

1. Subject to the following rules, the plaintiff may unite in the same action and in the same statement of claim several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such

causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

Order XVII.
Joinder of
Causes of
Action.

At Common Law, the question of whether several claims could be joined in one action depended upon considerations of a purely technical character, relating to the form of action applicable to each claim. But the C. L. P. Act, 1852, s. 41, authorized the joinder of any causes of action in one action, except replevin and ejectment, provided they were by and against the same parties and in the same right. But this was subject to the power to order separate trials, and direct separate records to be made up.

In Equity, multifariousness, that is the introduction of several separate and distinct objects into one suit, has always been a good ground of objection to a bill.

No practical difficulty has ever been found to arise from the power of joinder given by the C. L. P. Act. Plaintiffs have too much regard for their own interest to confuse their cases by an inconvenient combination of claims. And the several rules of this order adopt the rules of the Common Law Courts with some considerable extensions ; Rules 2, 4, 5, 6, *post*.

2. No cause of action shall unless by leave of the Court or a Judge be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held.

Hitherto no claim could be joined with a claim for possession in ejectment, except a claim for mesne profits in the case of landlord against tenant.

3. Claims by a trustee in bankruptcy as such shall not, unless by leave of the Court or a judge, be joined with any claim by him in any other capacity.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

In the Common Law Courts hitherto this could not be done, except to the limited extent authorised by s. 40 of the C. L. P. Act, 1852, by which, in an action brought by a man and his wife for an injury done to the wife, in which she was necessarily joined as co-plaintiff, the husband might add claims in his own right.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

Whether an executor, on the one hand, ought to sue, and, on the other hand, ought to be sued as such, or in his personal capacity,

Order XVII.
Joinder of
Causes of
Action.

sometimes turns upon very fine distinctions. See *Ashby v. Ashby*, 6 B. & C. 444; *Cornier v. Shev*, 3 M. & W. 350; *Bolingbroke v. Kerr*, Law Rep., 1 Ex. 222; *Moseley v. Rendell*, Law Rep., 6 Q. B. 338; *Abbott v. Parfitt*, Law Rep., 6 Q. B. 346. And great inconvenience has occasionally arisen from inability to join in the Common Law Courts claims by or against an executor in his personal and in his representative character. This rule removes the difficulty.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

See Order XVI., Rule 1, *ante*, p. 192, and note thereto.

7. The last three preceding rules shall be subject to Rule 1 of this Order, and to the Rules hereinafter contained.

See note to the next rule.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of in one action, may at any time apply to the Court or a Judge for an order confining the action to such of the causes of action as may be conveniently disposed of in one proceeding.

Rule 1 of this order gives power to "order separate trials of any of such causes of action, or make such order as may be necessary or expedient for the separate disposal thereof." This and the next rule speak of an order "confining the action to such of the causes of action as may be conveniently disposed of in one proceeding," and ordering other causes of action "to be excluded." If these latter rules are to be construed strictly, it seems probable that, except in some very extreme case, the former and less stringent power will be exercised rather than the latter and more stringent. Possibly, however, the first rule (which, it may be observed, is taken from the original schedule to the Act of 1873) may be regarded as the governing rule; and the later rules may be read as merely providing the machinery for giving effect to it. If so, an order confining the action may perhaps be read as meaning no more than an order under Rule 1; and the order for amending the proceedings mentioned in Rule 9, may be little more than an order for separate records. under s. 41 of the C. L. P. Act, 1852.

9. If, on the hearing of such application as in the last preceding rule mentioned, it shall appear to the Court or a Judge that the causes of action are such as cannot all be conveniently disposed of in one action, the Court or a Judge may order any of such causes of action to be excluded, and may direct the statement of claim, or, if no statement of claim has been delivered, the copy of the writ of summons and the indorsement of claim on the writ of summons to be amended accordingly, and may make such order as to costs as may be just.

ORDER XVIII.

ACTIONS BY AND AGAINST LUNATICS AND PERSONS OF UNSOUND MIND.

Order XVIII.
Actions by and against Lunatics and Persons of Unsound Mind.

In all cases in which lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the Act have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend in manner practised in the Court of Chancery before the passing of the said Act, and may in like manner defend any action by their committees or guardians appointed for that purpose.

In the Common Law Courts lunatics have hitherto sued and been sued in person or by attorney; 2 Chitty's Archbold, p. 126, 11th edit. Idiots have appeared in person, and a next friend has then been allowed to intervene; *ibid.*

In Chancery, lunatics and persons of unsound mind not so found have sued by the committee of the estate, or if there was none, by next friend. The committee of the estate of a lunatic so found, has been a necessary party to a suit affecting that estate, and defended for the lunatic. A person of unsound mind, not so found, if defendant, has appeared, and then a guardian *ad litem* has been appointed, as of course, on his own application. If he failed to apply, the plaintiff might obtain such an appointment.

ORDER XIX.

PLEADING GENERALLY.

Order XIX.
Pleading Generally.

1. The following rules of pleading shall be substituted for those heretofore used in the High Court of Chancery and in the Courts of Common Law, Admiralty, and Probate.

By s. 100 of the Judicature Act, 1873, *ante*, p. 113, with which the Act of 1875, to which the rules form the schedule, is incorporated, *ante*, p. 126, "pleading" includes "any petition or summons;" and also "the statements in writing of the claim or demand of any plaintiffs, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter claim of a defendant."

2. Unless the defendant in an action at the time of his appearance shall state that he does not require the delivery of a statement of complaint, the plaintiff shall within such time and in such manner as hereinafter prescribed, deliver to the defendant after his appearance a statement of his

Order XIX.
Pleading
Generally.

complaint and of the relief or remedy to which he claims to be entitled. The defendant shall within such time and in such manner as hereinafter prescribed deliver to the plaintiff a statement of his defence, set-off, or counter-claim (if any), and the plaintiff shall in like manner deliver a statement of his reply (if any) to such defence, set-off, or counter-claim. Such statements shall be as brief as the nature of the case will admit, and the Court in adjusting the costs of the action shall inquire at the instance of any party into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

For the form of a Memorandum of Appearance, see Appendix (A), Part 1, No. 6, *post*, p. 317. As to delivery of pleadings, see Rule 7 of this Order, *post*, p. 208. For time for delivering claim, see Order XXI., *post*, p. 215. For time for delivering defence, see Order XXII., *post*, p. 217. As to counter-claims, see the next rule, and Order XXII., Rules 5 to 10, *post*, p. 219. For time for reply, see Order XXIV., *post*, p. 222.

The question of undue prolixity is to be inquired into by the taxing officer, in the absence of any order of the Court or Judge; Additional Rules, *post*, p. 413; and either with or without the application of any party; *ibid*.

By s. 24 of the Judicature Act, 1873.

Sub-s. 1. *If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Court respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.*

Sub-s. 2. *If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every judge thereof, shall give*

to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

Order XIX.
Pleading
Generally.

Sub-s. 6. Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law, or by any custom, or created by any statute, in the same manner as the same would have been recognised and given effect to if this Act had not been passed by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

Sub-s. 7. The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

3. A defendant in an action may set-off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a statement of claim in a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on the appli-

1Ch. D. 176
2Ch. D. 148

Order XIX.
Pleading
Generally.

cation of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. *2 Ch. D. 736.*

By sec. 24, sub-sec. 3, of the Judicature Act, 1873, *ante*, p. 59.

The said Courts respectively, and every judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter, or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of Court, or any order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.

By Order XXII., Rule 10, *post*, p. 220.

“Where in any action a set-off or counter-claim is established as a defence against the plaintiff’s claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.”

The section and rules above set out introduce changes of the most important kind:—

First, in the case of pecuniary claims, the power of set off is no longer, as has hitherto been the case, limited to debts. Claims for unliquidated damages may for the future be set-off or set up against debts, and debts against damages, and damages against damages.

Secondly, a cross claim by a defendant may not merely be used by way of set-off, as a defence to the plaintiff’s claim; a defendant may, by way of counter-claim, claim in the original action any relief against the plaintiff, which he could hitherto have sought by a cross

ORDER XIX.—PLEADING GENERALLY.

9. In Order XIX., Rule 5, of "The Rules of the Supreme Court," the word "ten" is hereby substituted for the word "three" before the word "folios."

Order XIX.,
Rule 5a.

Actions in the Queen's Bench, Common
Exchequer Divisions shall be entered for
Associates and not in the District Registries

ORDER XXXVI.—TRIAL.

action at law, or suit in equity; so that there may be a judgment in his favour for a sum of money, if the balance of pecuniary claim prove to be in his favour; or any other remedy or relief may be adjudged to him to which he may show himself to be entitled.

Order XIX.
Pleading
Generally.

Several examples of counter-claims will be found among the Precedents of Pleading, in Appendix (C), *post*, p. 333. Thus in No. 10, *post*, p. 343, in answer to an action for freight of a ship under a time-charter, a counter-claim is set up for damages for breach of a warranty of speed in the charter party. In No. 24, *post*, p. 370, in answer to an action to recover possession of a house, a counter-claim is set for specific performance of an agreement to grant a lease of the house to the defendant.

Thirdly, not only may relief be sought against the plaintiff by way of counter-claim, but also relief relating to or connected with the original subject matter of the action may be sought against any other person, whether already a party to the action or not.

With respect to the case in which third parties, other than the original plaintiff and defendant, are to be brought in, not to obtain any present relief against them, but to obtain a decision binding as against them of the original question in the action, see Order XVI., Rules 17 to 21, *ante*, p. 198, and note thereto.

As to pleadings in cases of counter-claims, see Rules 10, 20, of this Order; Order XXII., Rules 5 to 10, *post*, p. 219.

As to excluding a counter-claim when it cannot conveniently be disposed of in the action, see Order XXII., Rule 9, *post*, p. 220.

4. Every pleading shall contain as concisely as may be a statement of the material facts on which the party pleading relies, but not the evidence by which they are to be proved, such statement being divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate allegation. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary. Forms similar to those in Appendix (C) hereto may be used.

As to the signature of pleadings, the greatest diversity of practice has hitherto prevailed in the various Courts to which the rules of this schedule apply. In the Common Law Courts, signature has long been dispensed with. In Chancery, bills, answers and informations, have required the signature of counsel, though petitions have not, except in certain cases. Admiralty pleadings have been signed both by counsel and proctor. In the Probate Court, pleadings have not been signed.

5. Every pleading which shall contain less than three folios of seventy-two words each (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed.

The use of printed pleadings is new, except as regards the Chancery Division and in Admiralty.

All pleadings, when required to be printed, are to be printed by the parties; Additional Rules, Orders I. to V., *post*, p. 391; where provisions will be found for printing, delivery of copies, and costs relating thereto.

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Pleading
Generally.

302.D.572

6. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party then such pleading or document shall be delivered by being filed with the proper officer.

7. Every pleading in an action shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, and with the reference to the letter and number of the action, the division to which, and the Judge (if any) to whom the action is assigned, the title of the action, the description of the pleading, and the name and place of the business of the solicitor and agent (if any), delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.

Hitherto Chancery pleadings have been filed as well as served on the parties; so have pleadings in the Admiralty and Probate Courts. In the Common Law Courts pleadings have merely been served and not filed, except where it was necessary to file a declaration upon default of appearance. (See note to Order XIII., Rules 5 and 6, *ante*, p. 186). Under the above rule, all pleadings are, in the first instance, to be delivered between the parties; but when judgment is entered, then (by Order XXI., Rule 1, *post*, p. 272) a copy of the pleadings is to be delivered to the proper officer, presumably to be filed. As to the times for delivering pleadings, see Order XXI., and notes thereto, *post*, p. 215; Order XXII., *post*, p. 217; Order XXIV., *post*, p. 222; Order LVII., *post*, p. 300. As to the letter and number, see Order V., Rule 8, *ante*, p. 171.

8. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and may also ask for general relief. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his statement of defence. If the plaintiff's claim be for discovery only the statement of claims shall show it.

9. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set off, or counter-claim founded upon separate and distinct facts.

As to the joinder of several causes of action, see Order XVII., *ante*, p. 200.

10. Where any defendant seeks to rely upon any facts as supporting a right of set-off or counter-claim, he shall, in his statement of defence, state specifically that he does so by way of set-off or counter-claim.

Order XIX.
Pleading
Generally.
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See Appendix (C), Nos. 10, 14, 24, *post*, pp. 348, 356, 370.

11. If either party wishes to deny the right of any other party to claim as executor, or as trustee, whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

12. In probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

13. No plea or defence shall be pleaded in abatement.

A plea in abatement in a Common Law action has been a plea which, without disputing the cause of action alleged, stated facts which showed that the plaintiff could not properly recover in the action as brought. They were generally founded upon some personal disability of parties, or upon defect of parties. As to defect of parties, see Order XVI., Rules 13 to 16, *ante*, p. 197.

14. No new assignment shall hereafter be necessary or used. But everything which has heretofore been alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim. 3 Ch. D. 2574

It has frequently happened in Common Law pleading that a plaintiff has stated his cause of action in the declaration, and the defendant has pleaded to it something which, if true, would seem to be an answer to the plaintiff's complaint; but that in truth the defendant has, wholly or partially, mistaken the cause of action to which the declaration was intended to refer. The action might be for breach of covenant to repair, and the plea might allege a release; but the plaintiff might really be going for breaches subsequent to the alleged release. Or, in an action of trespass to which a justification was pleaded, the plaintiff might really mean to complain of a different trespass from that sought to be justified, or of acts on the occasion in question in excess of what the alleged justification would cover. In such cases, the plaintiff's only course was to new assign, that is to say, to restate his cause of complaint with greater precision, so as to show the inapplicability of the defence pleaded. The defendant then pleaded to the new assignment. See Bullen & Leake's Precedents of Pleadings, p. 653, note (b), 3rd edit.; 1 Chitty's Archbold, p. 302, 11th edit.

It is obvious that the necessity for new assignments arose solely from the generality of Common Law pleadings and the absence of detail in those matters of fact on which the identification of the real cause of action depends. Under the new system, in which the statement of claim will be a narrative of the facts of the case, it is unlikely that any such misapprehensions as those which gave rise to

Order XIX. new assignments need arise. An example of pleading in a case in
Pleading which there would hitherto certainly have been a new assignment,
Generally. will be found in Appendix (C), No. 27, *post*, p. 376.

If such misapprehension does arise it may, under this rule, be corrected by amendment of the statement of claim. The amendment may be made as of right, without any order for the purpose, under Order XXVII., Rule 2, *post*, p. 223.

15. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession. And he may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned.

Hitherto in an action for the recovery of land, in the form of an ejectment, according to the practice as regulated by the C. L. P. Act, 1852, there have been no pleadings. The question tried has been simply whether or not the plaintiff was entitled to the possession of the land on the day laid in the writ. Under the new procedure there will be no special form of action for the recovery of land: See note to Order II., Rule 3, *ante*, p. 159. There will, therefore, be pleadings in actions to recover land as well as in other actions. The above rule is for the protection of defendants in such actions in the cases specified.

16. Nothing in these rules contained shall effect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead he shall not plead any other defence without the leave of the Court or a Judge.

A large number of Acts, from early times down to the present, have contained provisions whereby particular persons sued for particular classes of acts, may plead in answer the simple plea of not guilty, without further disclosing the defence on which they mean to rely, and may still prove any defence in justification which they can substantiate. By R.-G., T. T., 1853, Rule 21, the defendant must in such case insert in the margin of such plea the words "by statute," adding the year, chapter, and section of any statutes on which he relies, and stating whether they are public or not.

This privilege has been most frequently given for the protection of persons sued in respect of acts done in connection with the discharge of public or official duties. But it is by no means confined to such cases. See many instances collected in Bullen & Leake's Precedents of Pleadings, pp. 704, *et seq.*, 3rd edit. The right of so pleading is preserved by this rule.

17. Every allegation of fact in any pleading in an

action, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.

Order XIX.
Pleading
Generally.

100. B. 696
302. D. 781

The principle that each party is taken to admit those allegations in the pleading of the opposite party which he does not deny has always been a fundamental doctrine of Common Law pleading. It has not prevailed in Chancery. Its introduction into Chancery pleadings, supplemented as it is by Rule 20 of this Order, prohibiting mere general denials in the cases to which it applies, and the disentanglement at the same time of Chancery pleadings from discovery, with which they have hitherto been mixed up, may not improbably have the effect of materially changing the character of pleadings in the Chancery Division.

18. Each party in any pleading, not being a petition or summons, must allege all such facts not appearing in the previous pleadings as he means to rely on, and must raise all such grounds of defence or reply, as the case may be, as if not raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings, as for instance, fraud, or that any claim has been barred by the Statute of Limitations or has been released.

19. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

This rule is in accordance with the rule hitherto in force both at Common Law and in Chancery, except that it seems to contemplate a larger right of amendment than has been allowed in Chancery.

D. 106
2. 101 20. It shall not be sufficient for a defendant in his defence to deny generally the facts alleged by the statement of claim, or for a plaintiff in his reply to deny generally the facts alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth.

44. 345-6
354. 365-6
377

21. Subject to the last preceding Rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading, if any, subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may

44. D. 341

Order XIX.
Pleading
Generally.

except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

The effect of these two rules taken together is, that, whether in the case of a claim by the plaintiff or a counter-claim by the defendant, the opposing party is not at liberty to deny the facts alleged in general terms, but must deal with them in detail. But the party who has once told his own story in detail may, by a mere joinder of issue, deny in general terms what his opponent alleges in answer, unless the answer be by way of counter-claim. Joinder of issue, however, is to operate merely by way of denial. Of course, if the party entitled to join issue is not content with mere denial, and wishes to introduce new facts to answer his opponent's allegations, he must plead those facts under Rule 18 of this Order, or amend his previous pleadings.

22. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And so when a matter of fact is alleged with divers circumstances, it shall not be sufficient to deny it as alleged along with those circumstances, but a fair and substantial answer must be given.

23. When a contract is alleged in any pleading, a bare denial of the contract by the opposite party shall be construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise.

24. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.

25. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

26. Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice be material.

27. Wherever any contract or any relation between any persons does not arise from an express agreement, but is to be applied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Order XIX.
Pleading
Generally.

For an example of this method of pleading, see Appendix (C.,) No. 5, *post*, p. 340.

28. Neither party need in any pleading allege any matter of fact which the law presumes in his favour, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied.

[E.g.—Consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.]

See Appendix C., Nos. 6 and 7, *post*, p. 341, 343.

29. Where an action proceeds in a district registry all pleadings and other documents required to be filed shall be filed in the district registry.

As to when an action is to proceed in the district registry, see Order XII., Rules 4 and 5, *ante*, p. 182. As to proceedings in district registries generally see note to Order V., Rule 1, *ante*, p. 168. As to filing pleadings, see Rule 7 of this Order, *ante*, p. 208, and note thereto.

30. In actions for damage by collision between vessels, unless the Court or a Judge shall otherwise order, each solicitor shall, before any pleading is delivered, file with the proper officer a document to be called a Preliminary Act, which shall be sealed up and shall not be opened until ordered by the Court or a Judge, and which shall contain a statement of the following particulars :—

(a.) The names of the vessels which came into collision and the names of their masters.

(b.) The time of the collision.

(c.) The place of the collision.

(d.) The direction of the wind.

(e.) The state of the weather.

(f.) The state and force of the tide.

(g.) The course and speed of the vessel when the other was first seen.

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Pleading
Generally.

- (h.) The lights, if any, carried by her.
 (i.) The distance and bearing of the other vessel when first seen.
 (k.) The lights, if any, of the other vessel which were first seen.
 (l.) Whether any lights of the other vessel, other than those first seen, came into view before the collision.
 (m.) What measures were taken, and when, to avoid the collision.
 (n.) The parts of each vessel which first came into contact.

If both solicitors consent, the Court or a Judge may order the preliminary acts to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings.

ORDER XX.

Order XX.
Pleading
Matters arising pending
the Action.

PLEADING MATTERS ARISING PENDING THE ACTION.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be pleaded by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be pleaded by the plaintiff in his reply, either alone or together with any other ground of reply.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, and by leave of the Court or a Judge, deliver a further defence or further reply, as the case may be, setting forth the same.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last Rule mentioned alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may

deliver a confession of such defence, which confession may be in the form No. 2 in Appendix (B.) hereto, with such variations as circumstances may require, and he may thereupon sign judgment for his costs up to the time of the pleading of such defence unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order.

Order XX.
Pleading
Matters arising
pending the
Action.

The provisions of this order are in substance the same, with a few exceptions, as those of ss. 68 and 69 of the C. L. P. Act, 1852, and Rules 22 and 23 of R. G., T. T., 1853. But by the older rules the right to confess the plea, and take judgment for costs, was expressly excluded where the matter arising after action was pleaded by one of several defendants. There is no such limitation in this order.

The extension also in express terms of the right of setting up a defence arising after action brought to the case of a plaintiff answering a set-off or counter claim, is new. As to when matter so arising could hitherto be replied see *Eyton v. Littledale*, 4 Ex. 159; *Newington v. Levy*, Law Rep. 5 C. P. 607; Law Rep. 6 C. P. 180. It will be observed that the right to confess under Rule 3, is limited to the plaintiff.

Such a confession of a defence as that here provided for, does not operate as a mere discontinuance of the action, or leave the plaintiff at liberty to commence a fresh action. It is a determination of the matters in litigation, and precludes any second action for the same cause. *Newington v. Levy, ubi supra*.

ORDER XXI.

STATEMENT OF CLAIM.

Order XXI.
Statement of
Claim.

1. Subject to Rules 2 and 3 of this Order, the delivery of statements of claim shall be regulated as follows:—

(a.) If the defendant shall not state that he does not require the delivery of a statement of claim the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver it within six weeks from the time of the defendant's entering his appearance.

(b.) The plaintiff may, if he think fit, at any time after the issue of the writ of summons, deliver a statement of claim, with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, and although the defendant may have appeared and stated that he does not require the delivery of a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than six weeks after the appearance has been entered, unless otherwise ordered by the Court or a Judge.

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(c.) Where a plaintiff delivers a statement of claim without being required to do so, the Court or a Judge may make such order as to the costs occasioned thereby as shall seem just, if it appears that the delivery of a statement of claim was unnecessary or improper.

The statement that the defendant does not require a statement of claim is to be at the time of appearance. See Order XII., Rule 10, *ante*, p. 183; Appendix (A), Form No. 6, *post*, p. 317; Order XIX., Rule 2, *ante*, p. 203.

Hitherto the plaintiff in a Common Law action has, of strict right, had the whole of the term next after the appearance of the defendant to deliver his declaration. If he did not declare within that time, after notice to declare, he was liable to judgment of *non pros*. If no such judgment was entered, he had a year after service of the writ to declare in, after which he was out of Court. See C. L. P. Act, 1852, ss. 53, 58, notes to those sections in Day's Common Law Procedure Acts; 1 Chitty's Archbold, p. 222, 11th edit.

In Chancery, no question on this point could arise, the bill or statement of claim being itself the commencement of the action.

Under Order XIX., Rule 2, and this Rule, the plaintiff must deliver a statement of claim, if the defendant has appeared and has not given notice at the time of appearance, dispensing with its delivery.

He may deliver one, although either the defendant has not appeared, or has appeared and dispensed with its delivery. But as to costs, see also Additional Rules, *post*, p. 414.

The statement of claim may be served with the writ of summons, or, in ordinary cases, at any time between that and six weeks after appearance; but the time may be enlarged.

In Probate cases, the time may be longer, since, by Rule 2, if the defendant has appeared, the plaintiff has eight days from the filing of the defendant's affidavit of scripts for delivering his statement. In Admiralty actions *in rem*, by Rule 3, the statement of claim must be delivered within twelve days from appearance. Where a ship is under arrest, it might well be unjust to allow any delay on the part of the plaintiff before disclosing his claim.

These times may be either enlarged or abridged by order of a judge, and an order for enlargement may be made either before or after the prescribed time has expired. Order LVII., Rule 6, *post*, p. 300.

No pleadings can be either delivered or amended in the long vacation, except by order of the Court or a judge; and the period of the long vacation is not to be reckoned in computing the time for delivering any pleading, unless an order to the contrary is made. Order LVII., Rules 4, 5, *post*, p. 300.

By Order LVII., Rule 3, *post*, p. 300, "Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day," the next day is allowed.

2. In Probate actions the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver his statement of claim within six weeks from the entry of appearance by the defendant, or from the time limited for his appearance,

in case he has made default; but where the defendant has appeared the plaintiff shall not be compelled to deliver it until the expiration of eight days after the defendant has filed his affidavit as to scripts.

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Claim.

3. In Admiralty actions in rem the plaintiff shall, within twelve days from the appearance of the defendant, deliver his statement of claim.

4. Where the writ is specially indorsed, and the defendant has not dispensed with a statement of claim, it shall be sufficient for the plaintiff to deliver as his statement of claim a notice to the effect that his claim is that which appears by the indorsement upon the writ, unless the Court or a Judge shall order him to deliver a further statement. Such notice may be either written or printed or partly written and partly printed, and may be in the form No. 3 in Appendix (B), hereto, and shall be marked on the face in the same manner as is required in the case of an ordinary statement of claim. And when the plaintiff is ordered to deliver such further statement it shall be delivered within such time as by such order shall be directed, and if no time be so limited then within the time prescribed by Rule 1 of this Order.

The special indorsement referred to is where the claim is merely for a debt or liquidated demand, and the writ is indorsed with particulars of the claim, under Order III., Rule 6, *ante*, p. 166.

It is probable that in all the simpler classes of money claims, as for the price of goods, arrears of rent or salary, money lent, on bills or notes, and the like, the cheap and easy process provided by this section will be universally adopted. The special indorsement on the writ, if fairly framed, in the great majority of cases gives the defendant all the information he can need as to the claim he has to meet. If in any case the indorsement is insufficient for this purpose, an application for further particulars can be made under this rule.

ORDER XXII.

DEFENCE.

Order
XXII.
Defence.

1. Where a statement of claim is delivered to a defendant he shall deliver his defence within eight days from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a Judge.

Hitherto the defendant in a Common Law action has had eight days to plead; C. L. P. Act, 1852, s. 63. The time has always been

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Defence.

freely enlarged when necessary, but as a general rule only upon terms, the material one of which has been that the defendant should take short notice, that is a four days' notice, of trial. See Order XXXVI., Rule 9, *post*, p. 25. In Chancery a defendant required to answer has had twenty-eight days from the delivery of the interrogatories: See Order XXXVII., Rule 4, of the Consolidated Orders, and notes thereto in Morgan's Chancery Acts and Orders, p. 564, 4th edit.

In Admiralty suits the time to answer has been twelve days; Adm. Rules 68. In Probate suits the time to plead has been 8 days; Rule 38, Contentious Business.

The time being now fixed at so short a period as eight days in all the divisions, further time to plead will probably have to be obtained in the great majority of cases.

As to the extension or reduction of the time for pleading, and as to the computation of time, and vacations, see note to Order XXI., Rule 1, *ante*, p. 216, and Orders LVII. and LXI., *post*, pp. 300, 308.

As to the time for delivering a further defence, founded upon matters arising after defence delivered, see Order XX., Rule 2, *ante*, p. 214.

2. A defendant who has appeared in an action and stated that he does not require the delivery of a statement of claim, and to whom a statement of claim is not delivered, may deliver a defence at any time within eight days after his appearance, unless such time is extended by the Court or a Judge.

If the plaintiff has delivered a statement of claim, then, under Order XIX., Rule 2, and Rule 1 of this Order, the defendant is bound to deliver a defence. If he fail to do so, judgment may be had against him by default, under Order XXIX., Rules 2 to 11. But if the statement of claim has been delivered uncalled for and improperly, the plaintiff may be ordered to pay the costs occasioned thereby: Order XXI., Rule 1, *ante*, p. 216; and Additional Rules, *post*, p. 414.

If the defendant at the time of his appearance (Order XII., Rule 10, *ante*, p. 183, Appendix (A), Form No. 6, *post*, p. 317, Order XIX., Rule 2, *ante*, p. 203), dispenses with the delivery of a statement of claim, and if the plaintiff takes advantage of the notice and delivers none, then the defendant is, by this rule, not bound to deliver any defence. The effect appears to be that in such a case pleadings are dispensed with by mutual consent, the indorsement on the writ alone identifying the controversy to be decided. This rule, however, reserves to the defendant the right to deliver a defence, although no statement of claim has been delivered.

3. Where leave has been given to a defendant to defend under Order XIV., Rule 1, he shall deliver his defence, if any, within such time as shall be limited by the order giving him leave to defend, or if no time is thereby limited, then within eight days after the order.

This refers to the case of a writ specially indorsed, when the plaintiff has applied for judgment notwithstanding appearance.

4. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted.

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By Order XIX., Rule 17, *ante*, p. 210, any allegation not denied or stated not to be admitted is to be taken as admitted. Admissions may also be made by notice apart from the pleadings. Order XXXII., Rule 1, *post*, p. 239.

5. Where a defendant by his defence sets up any counter-claim, which raises questions between himself and the plaintiff along with any other person or persons, he shall add to the title of his defence a further title similar to the title in a statement of complaint, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

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The right of a defendant to join other persons besides the plaintiff in a counter-claim depends upon s. 24, subs. 3, of the Judicature Act, 1873. See Order XIX., Rule 3, *ante*, p. 205, and note thereto.

6. Where any such person as in the last preceding Rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same Rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 4 in Appendix (B) hereto, or to the like effect.

As to service of writs of summons, see Orders IX., X., XI., *ante*, p. 175.

7. Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action.

As to appearance, see Order XII., *ante*, p. 181.

8. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.

The time to deliver a defence is eight days, unless the time is enlarged; Rule 1 of this Order, *ante*, p. 217.

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9. Where a defendant by his statement of defence sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time before reply, apply to the Court or a Judge for an order that such counter-claim may be excluded, and the Court or a Judge may, on the hearing of such application, make such order as shall be just.

See Order XIX., Rule 3, *ante*, p. 205.

10. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

See sec. 24. subs. 6. of the Judicature Act, 1873 ; Order XIX., Rule 3, *ante*, p. 205, and note thereto.

11. In Probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Court of Probate.

This rule is in accordance with the practice hitherto existing in the Probate Court under Rule 41 of Rules Contentious Business, 30th July, 1862.

ORDER XXIII.

DISCONTINUANCE.

The plaintiff may, at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save an interlocutory application), by notice in writing, wholly discontinue his action or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn. Such costs shall

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XXIII.
Discon-
tinuance.

As to payment of costs of discontinued action after before bringing another.
As to payment of costs of discontinued action after before bringing another.

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be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this Rule otherwise provided, it shall not be competent for the plaintiff to withdraw the Record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may, before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

Order XXIII. Discontinuance.

In the Common Law Courts, &c.

ORDER XXIII.—DISCONTINUANCE. June 1876

10. A defendant may sign judgment for the costs of an action if it is wholly discontinued, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued.

Order XXIII., Rule 2.

on payment of costs; after decree, only by consent.

It has also been the right of the party who entered a cause for trial to withdraw the record at any time before the jury were sworn to try the cause; in which case he had to pay the costs of the day. The effect of withdrawing the record has been to revoke the entry of the cause for trial (causes having been entered for trial by delivering the Nisi Prius record to the officer of the Court). But it left the right of re-entering the cause for trial subsequently.

This rule is one of several in the present body of rules which materially curtail the plaintiff's freedom of control over the conduct of the cause, and leave him much less fully *dominus litis* than he has hitherto been. He must for the future deliver his statement of claim within six weeks after appearance; Order XXI., Rule 1, *ante*, p. 215; and his reply within three weeks after defence; Order XXIV., Rule 1, *post*. His right to discontinue is by this rule restrained. If he fail to give notice of trial within a limited time, the defendant may do so; Order XXXVI., Rule 4, *post*, p. 250. He cannot by this rule withdraw the record, except by leave. Nor can he countermand notice of trial if he has once given it, except by consent or with leave; Order XXXVI., Rule 13, *post*, p. 251. And he cannot, as heretofore, elect to be nonsuited, reserving the right to bring a fresh action for the cause. A nonsuit will be equivalent to a judgment on the merits for the defendant, subject to its being set aside for cause; Order XLI., Rule 6, *post*, p. 273.

If the statement of defence sets up matters arising after the issue of the writ of summons, the truth of which the plaintiff cannot deny, and which afford a good answer in law, the proper course for the plaintiff will be, not to discontinue under this order, but to enter a confession of the defence, and take judgment for his costs under Order XX., Rule 3, *ante*, p. 214.

*Pending Suit (Ch. D. 89*Order
XXIV.
Reply and
Subsequent
Pleadings.

ORDER XXIV.

REPLY AND SUBSEQUENT PLEADINGS.

1. A plaintiff shall deliver his reply, if any, within three weeks after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a Judge. *Time of reply Ch. D. 3141*

The time for reply in Common Law Courts has hitherto been unlimited, subject to the right of the defendant to call upon the plaintiff to reply; C. L. P. Act, 1852, s. 53. In Admiralty suits six days have been allowed; Adm. Rules, Rule 68; in Probate suits eight days, Rules Contentious Business, Rule 39.

In Chancery replications might be filed within four weeks after answer; but they have been used less frequently than at law. Any matter which the plaintiff has found it necessary to bring forward in addition to what he stated in his bill has been introduced ordinarily by way of amendment of his bill.

As to extension of time for pleading, the computation of time, and vacations, see note to Order XXI., Rule 1, *ante*, p. 216.

As to the time for delivering a further reply to a counter-claim founded upon matter arising after reply or the time for reply, see Order XX., Rule 2, *ante*, p. 214.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then upon such terms as the Court or Judge shall think fit.

3. Subject to the last preceding Rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge.

Order XXV.
Close of
Pleadings.

ORDER XXV.

CLOSE OF PLEADINGS.

As soon as either party has joined issue upon any pleading of the opposite party simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed.

*30. D. 212*Order
XXVI.
Issues.

ORDER XXVI.

ISSUES.

Where in any action it appears to a Judge that the statement of claim or defence or reply does not sufficiently define the issues of fact in dispute between the parties, he may direct the parties to prepare issues, and such issues shall, if the parties differ, be settled by the Judge.

ORDER XXVII.

AMENDMENT OF PLEADINGS.

Order
XXVII.
Amendment
of Pleadings.

1. The Court or a Judge may, at any stage of the proceedings, allow either party to alter his statement of claim or defence or reply, or may order to be struck out or amended any matter in such statements respectively which may be scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action, and all such amendments shall be made as may be necessary for the purpose of determining the real questions or question in controversy between the parties.

1 Ch. D. 42
2 Ch. D. 729

3 Ch. D. 106

The very large powers of amendment given by this rule have long been possessed and freely exercised by the Common Law Courts; C. L. P. Act, 1852, s. 222; C. L. P. Act, 1854, s. 96; C. L. P. Act, 1860, s. 36.

By Rule 6 of this Order, an application to amend may be made to the Court or to a judge at chambers, or to the judge at the trial.

As to when amendments may be made without leave, see the next following rules.

As to amendments by striking out, adding, or substituting parties, see Order XVI., Rules 13 to 16, *ante*, p. 197.

As to the case of claims inconveniently joined, see Order XVII., Rules 1, 8, 9, *ante*, p. 200; and as to counter-claims inconveniently raised, see Order, XXII., Rule 9, *ante*, p. 220.

By Order LVIII., Rule 5, *post*, p. 304, the Court of Appeal has all the powers as to amendment of the Court of First Instance.

By Order XXVIII., Rule 7, no order for amendment is to be made while a demurrer is pending, except on payment of the costs of the demurrer.

2. The plaintiff may, without any leave, amend his

6. The Court, or a Judge, may, at any stage of the proceedings, allow the Plaintiff to amend the writ of summons

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Rule 11.

in such manner, and on such terms, as may seem just.

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Order XXIV., Rule 1.

No amendment can be made without leave while a demurrer is pending, and such leave can only be given on payment of the costs of the demurrer. Order XXVIII., Rule 7, *post*, p. 227.

3. A defendant who has set up in his defence any set-off or counter-claim may, without any leave, amend such set-off or counter-claim at any time before the expiration of the time allowed him for pleading to the reply, and before pleading thereto, or in case there be no reply, then at any time before the expiration of twenty-eight days from the filing of his defence.

As to the time to plead to a reply, see Order XXIV., Rule 3.

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of Pleadings.

4. Where any party has amended his pleading under either of the last two preceding Rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the Court or a Judge, to disallow the amendment, or any part thereof, and the Court or Judge, may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may seem just.

5. Where any party has amended his pleading under Rule 2 or 3 of this Order, the other party may apply to the Court or a Judge for leave to plead or amend his former pleading within such time and upon such terms as may seem just.

It will be observed that under this order there is no absolute right in either party to amend his pleading or plead further because his opponent has amended; an order must be obtained under this rule.

6. In all cases not provided for by the preceding Rules of this Order, application for leave to amend any pleading may be made by either party to the Court or a Judge in Chambers, or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may seem just.

7. If a party who has obtained an order for leave to amend a pleading delivered by him does not amend the same within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become ipso facto void, unless the time is extended by the Court or a Judge.

8. A pleading may be amended by written alterations in the pleading which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the pleading difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the pleading as amended.

As to when pleadings generally may be written and when they must be printed, see Order XIX., Rule 5, *ante*, p. 207.

9. Whenever any pleading is amended, such pleading when amended shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz. : “Amended day of .”

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10. Whenever a pleading is amended, such amended pleading shall be delivered to the opposite party within the time allowed for amending the same.

ORDER XXVIII.

Order
XXVIII.
Demurrer.

DEMURRER.

1. Any party may demur to any pleading of the opposite party, or to any part of a pleading setting up a distinct cause of action, ground of defence, set-off, counter-claim, reply, or, as the case may be, on the ground that the facts alleged therein do not show any cause of action, or ground of defence to a claim or any part thereof, or set off, or counter-claim, or reply, or, as the case may be, to which effect can be given by the Court as against the party demurring.

In Chancery a demurrer has lain only to a bill, not to an answer. The Common Law practice of allowing a demurrer to any pleading, or any separate ground of claim or defence in any pleading, is here adopted. In Admiralty, demurrers have not hitherto been in use. But objections to the sufficiency of pleadings in point of law have been taken by the analogous proceeding of a motion to disallow the pleadings; Williams' and Bruce Adm. Practice, p. 250.

2. A demurrer shall state specifically whether it is to the whole or to a part, and if so, to what part, of the pleading of the opposite party. It shall state some ground in law for the demurrer, but the party demurring shall not, on the argument of the demurrer, be limited to the ground so stated. A demurrer may be in the Form 28 in Appendix (C) hereto. If there is no ground, or only a frivolous ground of demurrer stated, the Court or Judge may set aside such demurrer, with costs.

3. A demurrer shall be delivered in the same manner and within the same time as any other pleading in the action. *2 Ck. D. 112*

As to delivery of pleadings, see Order XIX., Rules 6, 7, *ante*, p. 208.

As to times for pleading, see Order XXI., Rule 1, and note thereto, *ante*, p. 215; Order XXII., Rules 1, 2, 3, 8, *ante*, p. 217; Order XXIV., Rules 1, 3, *ante*, p. 222.

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XXVIII.
Demurrer.

4. A defendant desiring to demur to part of a statement of claim, and to put in a defence to the other part, shall combine such demurrer and defence in one pleading. And so in every case where a party entitled to put in a further pleading desires to demur to part of the last pleading of the opposite party he shall combine such demurrer and other pleading.

There is nothing, it will be observed, in this rule authorizing any party as of right to plead and demur to the same matters, but only to different matters contained in the same pleading. But, apparently under the rule, whenever any party demurs and pleads at the same time, the pleading and demurrer must be one document, and not be delivered separately.

5. If the party demurring desires to be at liberty to plead as well as demur to the matter demurred to, he may, before demurring, apply to the Court or a Judge for an order giving him leave to do so; and the Court or Judge, if satisfied that there is reasonable ground for the demurrer, may make an order accordingly, or may reserve leave to him to plead after the demurrer is overruled, or may make such other order and upon such terms as may be just.

Where any party desires to demur without precluding himself from also pleading to the same matter to which he demurs, three courses are open :

1. He may obtain leave, under this rule, to plead as well as demur.

This is in accordance with the practice hitherto observed in the Common Law Courts, under the C. L. P. Act, 1852, s. 80.

2. He may also under this rule obtain an order reserving him leave to plead in case the demurrer be overruled.

In either case leave is only to be given if the Court or judge is satisfied that there is reasonable ground for the demurrer, and terms may be imposed.

3. He may proceed with his demurrer simply, and leave it to the Court if it overrules his demurrer to give him leave to plead, under Rule 12 of this Order.

6. When a demurrer either to the whole or part of a pleading is delivered, either party may enter the demurrer for argument immediately, and the party so entering such demurrer shall on the same day give notice thereof to the other party. If the demurrer shall not be entered and notice thereof given within ten days after delivery, and if the party whose pleading is demurred to does not within such time serve an order for leave to amend, the demurrer shall be held sufficient for the same purposes and with the same result as to costs as if it had been allowed on argument.

This rule is similar to Order XIV., Rules 14 and 15 of the Consolidated Orders.

Although this rule leaves it open to either party to enter a

demurrer for argument, its practical effect is to compel the party demurred to, to enter the demurrer, unless he amends his pleading; since the omission to take one or other of these courses within ten days will be equivalent to judgment against him on the demurrer with costs. As to the effect of judgment allowing a demurrer, see Rules 8, 9, 10 of this Order.

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XXVIII.
Demurrer.

As to amendment pending a demurrer, see the next rule; and as to amendments generally, see Order XXVII., *ante*, p. 223.

7. While a demurrer to the whole or any part of a pleading is pending, such pleading shall not be amended, unless by order of the Court or a Judge; and no such order shall be made except on payment of the costs of the demurrer.

See as to amendment, Order XXVII., *ante*, p. 223.

8. Where a demurrer to the whole or part of any pleading is allowed upon argument, the party whose pleading is demurred to shall, unless the Court otherwise order, pay to the demurring party the costs of the demurrer.

9. If a demurrer to the whole of a statement of claim be allowed, the plaintiff, subject to the power of the Court to allow the statement of claim to be amended, shall pay to the demurring defendant the costs of the action, unless the Court shall otherwise order.

10. Where a demurrer to any pleading or part of a pleading is allowed in any case not falling within the last preceding Rule, then (subject to the power of the Court to allow an amendment) the matter demurred to shall as between the parties to the demurrer be deemed to be struck out of the pleadings, and the rights of the parties shall be the same as if it had not been pleaded.

11. Where a demurrer is overruled the demurring party shall pay to the opposite party the costs occasioned by the demurrer, unless the Court shall otherwise direct.

12. Where a demurrer is overruled the Court may make such order and upon such terms as to the Court shall seem right for allowing the demurring party to raise by pleading any case he may be desirous to set up in opposition to the matter demurred to.

See note to Rule 5 of this Order.

13. A demurrer shall be entered for argument by delivering to the proper officer a memorandum of entry in the Form No. 29 in Appendix (C).

Order
XXIX
Default of
Pleading.

ORDER XXIX.

DEFAULT OF PLEADING.

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1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may at the expiration of that time, apply to the Court or a Judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or Judge may, if no statement of claim have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as to the Court or Judge shall seem just.

As to time, see Order XXI, Rule 1, and note thereto, *ante*, p. 215.

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2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence or demurrer, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs.

This is in accordance with the Common Law practice under the C. L. P. Act, 1852, s. 93.

3. When in any such action as in the last preceding Rule mentioned there are several defendants, if one of them make default as mentioned in the last preceding Rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

This provision is new. See note to Order XIII, Rule 4, *ante*, p. 186.

4. If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant, and a writ of inquiry shall issue to assess the value of the goods, and the damages, or the damages only, as the case may be. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them shall be ascertained in any way in which any question arising in an action may be tried.

Hitherto damages in such a case could only be assessed by a sheriff's jury under a writ of inquiry, or by a master in cases within s. 94 of the C. L. P. Act, 1852. See note to Order XIII, Rule 6, *ante*, p. 187.

5. When in any such action as in Rule 4 mentioned there are several defendants, if one of them make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant so making default, and proceed with his action against the others. And in such case, damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct.

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This is in accordance with the practice in the Common Law Courts hitherto.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and the defendant makes default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in Rule 4.

7. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

Hitherto there have been no pleadings in such actions, the proceedings being by action of ejectment. See note to Order II., Rule 3, *ante*, p. 159.

8. Where the plaintiff has endorsed a claim for mesne profits, arrears of rent, or damages for breach of contract upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants, and proceed as mentioned in Rules 4 and 5.

9. In Probate actions, if any defendant make default in filing and delivering a defence or demurrer, the action may proceed, notwithstanding such default.

10. In all other actions than those in the preceding rules of this order mentioned, if the defendant makes default in delivering a defence or demurrer, the plaintiff may set down the action on motion for judgment, and such

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judgment shall be given as upon the statement of claim the Court shall consider the plaintiff to be entitled to.

This rule applies in all actions other than actions for a debt, or damages, or the recovery of goods, or lands, or Probate actions.

As to motion for judgment see Order XL., *post*, p. 269.

11. Where, in any such action as mentioned in the last preceding rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

34. D. 257

12. If the plaintiff does not deliver a reply or demurrer, or any party does not deliver any subsequent pleading, or a demurrer, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and the statements of fact in the pleading last delivered shall be deemed to be admitted.

13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a Judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

See s. 24, sub-s. 3 of the Judicature Act, 1873, and Order XIX., Rule 3, *ante*, p. 205, and note thereto.

14. Any judgment by default, whether under this order or under any other of these Rules, may be set aside by the Court or a Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit.

ORDER XXX.

PAYMENT INTO COURT IN SATISFACTION.

Order
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Payment
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Satisfaction.

1. Where any action is brought to recover a debt or damages, any defendant may at any time after service of the writ, and before or at the time of delivering his defence.

or by leave of the Court or a Judge at any later time, pay into Court a sum of money by way of satisfaction or amends. Payment into Court shall be pleaded in the defence, and the claim or cause of action in respect of which such payment shall be made shall be specified therein.

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2 Ex. D 281

The practice of paying money into Court in satisfaction of the plaintiff's claim has hitherto been governed by several statutes.

By the 6 & 7 Vict., c. 92, s. 2, in an action for a libel contained in any public newspaper or periodical publication, the defendant may plead that the libel was inserted without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, an apology was published or offered, and may pay money into Court by way of amends.

By s. 70 of the C. L. P. Act, 1852, payment into Court was allowed in all actions except actions for assault and battery, false imprisonment, libel, slander, or malicious arrest or prosecution, or debauching the plaintiff's daughter or servant. But s. 2 of 6 & 7 Vict., c. 92 was left unaffected.

The C. L. P. Act, 1860, gave to plaintiffs in replevin the right to pay into Court, by s. 23; and allowed defendants in actions upon common money bonds, and actions for the detention of goods, to do the same thing, by leave of the Court or a judge by s. 25.

The language of the above rule, "any action . . . brought to recover a debt or damages," seems to be wide enough to cover all the cases included in any of the Acts just referred to, except perhaps the case of a plaintiff in replevin. As to the case of replevin and any other cases, if any there be, not covered by this rule, the Acts which have hitherto authorized payment into Court will do so still. See ss. 23 and 76 of the Judicature Act, 1873, *ante*, pp. 57, 100; and s. 21 of the Act of 1875, *ante*, p. 138.

And the present rule omits all the exceptions contained in s. 70 of the C. L. P. Act, 1852, *supra*; so that money may be paid into Court for the future, in the cases heretofore excepted.

The practice as to payment into Court has hitherto been governed by ss. 70, 71, 72, and 73 of the C. L. P. Act, 1852, and Rules 11, 12, and 13 of R. G., H. T., 1853.

The most material change of practice introduced by the present order is that, whereas hitherto money could only be paid into Court at the time of pleading, for the future it may be paid in at any time after service of the writ, down to and including the time of delivering the defence, or afterwards by leave. Heretofore a defendant who paid money into Court, if it turned out that the amount paid in was sufficient, has been entitled to costs from the date of the payment into Court. It may be presumed that the same rule will hereafter prevail; and it may, therefore, be of importance to pay money into Court as early as possible. If the money be paid in with leave after defence, it would seem that the defence must be amended. By ss. 70, 72 of the C. L. P. Act, 1852, though a sole defendant, or all the defendants jointly, could pay into Court as of right, one of several had to obtain leave to do so. The above rule contains no such restriction.

Questions of great difficulty have hitherto often arisen as to the effect of payment into Court by way of admission, especially where the declaration has contained common money counts. Under the new system of pleading it is probable that these difficulties will not arise.

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2. Such sum of money shall be paid to the proper officer, who shall give a receipt for the same. If such payment be made before delivering his defence the defendant shall thereupon serve upon the plaintiff a notice that he has paid in such money, and in respect of what claim, in the Form No. 5, in Appendix (B.) hereto.

Hitherto the money being paid in at the time of pleading, the receipt has been written in the margin of the plea; s. 72 of C. L. P. Act, 1852. And the notice has been given only by plea.

3. Money paid into Court as aforesaid may, unless otherwise ordered by a Judge, be paid out to the plaintiff, or to his solicitor, on the written authority of the plaintiff. No affidavit shall be necessary to verify the plaintiff's signature to such written authority unless specially required by the officers of the court.

This rule is the same in effect with s. 72 of C. L. P. Act, 1852, and Rule 11 of Reg. Gen. H. T. 1853, with the exception of the words "unless otherwise ordered by a judge," which are new.

28. D. 281
4. The plaintiff, if payment into Court is made before delivering a defence, may within four days after receipt of notice of such payment, or if such payment is first stated in a defence delivered then may before reply, accept the same in satisfaction of the causes of action in respect of which it is paid in; in which case he shall give notice to the defendant in the Form No. 6 in Appendix (B.) hereto, and shall be at liberty, in case the sum paid in is accepted in satisfaction of the entire cause of action, to tax his costs, and in case of non-payment within forty-eight hours, to sign judgment for his costs so taxed.

Hitherto by s. 73 of the C. L. P. Act, 1852, the plaintiff in the case dealt with by the Rule, accepted the sum in satisfaction by his replication.

ORDER XXXI.

DISCOVERY AND INSPECTION.

Order
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1. The plaintiff may, at the time of delivering his statement of claim, or at any subsequent time not later than the close of the pleadings, and a defendant may, at the time of delivering his defence, or at any subsequent time not later than the close of the pleadings, without any order for that purpose, and either party may at any time, by the leave of the Court or a Judge, deliver interrogatories in writing for the examination of the opposite

party or parties, or any one or more of such parties, with a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose.

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This rule will effect a very material change of practice in the Queen's Bench, Common Pleas, and Exchequer Divisions. In these Courts discovery by interrogatories has hitherto depended on ss. 5 and 52 of the C. L. P. Act, 1854. These sections, as they have been construed, allowed interrogatories to be put only by leave of a judge; and the practice has been not to give leave to interrogate generally, or even to interrogate upon such and such matters, but to settle at chambers the specific questions to be allowed. This practice has worked in a very unsatisfactory manner, for in many cases it is quite impossible to say whether a particular question ought to be answered or not until the answers to the other questions have been seen. And, further, the application had ordinarily to be based upon an affidavit, both of the party and his attorney, that there was a good cause of action or defence upon the merits. This requirement often wrought injustice; for in many cases, the very reason why interrogatories are needed is because the validity of the cause of action or defence may depend upon the result of the discovery.

In the Chancery division too, the changes introduced by this rule will be very material. Interrogatories by a plaintiff have hitherto been an echo of the Bill, covering the whole field covered by the Bill. For the future a party may interrogate at an early stage, and on an extensive scale, if such a course be in the particular case necessary. He may, on the other hand, wait till the pleadings have disclosed how far the parties are really at issue, and limit his interrogatories accordingly. And the next rule, as to the costs of needless interrogatories, may probably be found to exercise a useful check.

Under the above rule interrogatories will be administered as of right within the periods specified. But this is subject to the right to apply to strike out any question under Rule 5, or to object to answer it under Rule 8 of this Order.

2. The Court in adjusting the costs of the action shall, at the instance of any party, inquire or cause inquiry to be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing master or of the Court or Judge that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the cost occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

The Taxing Officer is to inquire into the matters referred to in this rule, whether specially ordered or not, and whether applied to further purposes or not; Additional Rules, *post*, p. 413.

3. Interrogatories may be in the Form No. 7 in Appendix (B) hereto, with such variations as circumstances may require.

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4. If any party to an action be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply at chambers for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

This rule is borrowed from s. 51 of the C. L. P. Act, 1854. In Chancery it has been hitherto necessary to make the officer a party in order to obtain discovery from him, or to file a cross bill.

5. Any party called upon to answer interrogatories whether by himself or by any member or officer, may, within four days after service of the interrogatories, apply at chambers to strike out any interrogatory, on the ground that it is scandalous or irrelevant, or is not put *bonâ fide* for the purpose of the action, or that the matter inquired after is not sufficiently material at that stage of the action, or on any other ground. And the Judge, if satisfied that any interrogatory is objectionable, may order it to be struck out.

Two modes are provided for objecting to a question: first, by applying to strike it out under this rule; secondly, by objecting on oath to answer it under Rule 8. It may probably be presumed that in ordinary cases the objection will be required to be taken in the latter mode. See note to Rule 1, *ante*, p. 233.

6. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as a Judge may allow.

7. An affidavit in answer to interrogatories shall, unless otherwise ordered by a Judge, if exceeding three folios, be printed, and may be in the Form No. 8 in Appendix (B) hereto, with such variations as circumstances may require.

Such affidavits have not hitherto been printed in the Common Law Courts.

In Chancery they have been printed. The printing of such affidavits in Chancery has hitherto been done by the Officers of the Court. For the future this, like all other printing, will be done by the parties; Additional Rules, Orders I. to V., *post*, p. 391, where provisions will be found as to printing, delivery of copies, and costs.

8. Any objection to answering any interrogatory may be taken, and the ground thereof stated in the affidavit.

See note to Rule 5, *ante*.

9. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such

business to be referred to the Official Referees
under the Supreme Court of Judicature Act,
be distributed among such Official Referees
by the clerks to the Registrars of the Supreme
every Division, in like manner in all respects
as referred to conveying counsel appointed

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11. In Order XXXI., Rule 7, of "The Rules of the Supreme Court," the word "ten" is hereby substituted for the word "three" before the word "folios."

affidavit objected to as insufficient shall be determined by the Court or a Judge on motion or summons.

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The mode of objecting in Chancery to the sufficiency of an answer has been by exception. A summary process is substituted by this rule.

10. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or answer further, either by affidavit or by vivâ voce examination, as the Judge may direct.

As to the former practice in the Common Law Courts, see s. 53 of the C. L. P. Act, 1854. As to the practice in Chancery, see note to the last rule.

11. It shall be lawful for the Court or a Judge at any time during the pendency therein of any action or proceeding, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such action or proceeding, as the Court or Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

2 Ch. D. 140
2 Ch. D. 644
10 B. D. 423

The earlier rules of this order having dealt with the first branch of discovery, that by interrogatories, Rules 11 to 19, proceed to deal with discovery as it affects documents.

The subject obviously embraces two parts: first, discovery simply, that is to say, the power of compelling your opponents to disclose what documents he has in his possession; secondly, the power of compelling their production. The above rule (which it may be noted is repeated from the original schedule to the Act of 1873), appears, from the words "production upon oath," to deal with both branches of the subject; and it gives very wide powers to the judge.

The subject of discovery simply is dealt with in Rules 12 and 13. That of production or inspection of documents as of right without the intervention of a judge in Rules 14 to 17. That of production and inspection by order of a judge in Rules 18 and 19.

12. Any party may, without filing any affidavit, apply to a Judge for an order directing any other party to the action to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question in the action.

The right to discovery of documents has long been enforced in Courts of Equity. In the Common Law Courts it has depended upon s. 50 of the C. L. P. Act, 1854. That section gave the right to obtain an order for discovery, but only upon an affidavit tracing some one document, to the production of which the applicant was

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entitled, into the possession or power of the opposite party. This often gave rise to difficulty. It has for many years been customary to evade the difficulty by inserting a question as to documents in interrogatories delivered under the 51st section, instead of proceeding under the 50th. The above rule dispenses with any affidavit.

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding Rule has been made, shall specify which, if any, of the documents therein mentioned, he objects to produce, and it may be in the Form No. 9 in Appendix (B) hereto, with such variations as circumstances may require.

The form provided is the same which has been in use in the Court of Chancery under Regulations, 8th Aug., 1857, 24; Morgan's Chancery Acts and Orders, p. lvii., 4th edit.

14. Every party to an action or other proceeding shall be entitled, at any time before or at the hearing thereof, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such action or proceeding, unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the action, or that he had some other sufficient cause for not complying with such notice.

15. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 10 in Appendix (B) hereto.

By Additional Rules, *post*, p. 413, no costs of a notice or inspection, under this rule, is to be allowed, unless it is shown to the satisfaction of the Taxing Officer that there was good reason for it.

16. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party, giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, and stating which (if any) of the documents he objects to produce, and on

what ground. Such notice may be in the Form No. 11 in Appendix (B) hereto, with such variations as circumstances may require.

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17. If the party served with notice under Rule 15 omits to give such notice of a time for inspection, or objects to give inspection, the party desiring it may apply to a Judge for an order for inspection.

18. Every application for an order for inspection of documents shall be to a Judge. And except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

The power to compel production and inspection of documents is given in very wide terms by Rule 11, *ante*, p. 235. Courts of Equity have long compelled the production of documents. The Common Law Courts did so to a very limited extent at Common Law, but mainly under 14 & 15 Vict., c. 99, s. 6. This Act authorises inspection to be granted in an action or proceeding in all cases in which it might be obtained by proceedings in Equity. There seems to be nothing in these rules to alter the rules hitherto in force as to what documents any party is entitled to inspect.

By s. 66 of the Act of 1873, it may be ordered that books or documents be produced at the office of any district registry.

As to the mode of taking copies of documents, and the costs to be paid, see Additional Rules, *post*, pp. 392, 403.

19. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in dispute in the action should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

It often happens that one party to an action alleges some fact, such as partnership or agency, for example, which the other denies. If the fact alleged were admitted to be true, it would clearly entitle the party alleging it to discovery. If it were admitted to be untrue he would as clearly be disentitled to it. By dealing with the question of discovery either way before the other question, on the solution of which the right to discovery really depends, injustice may be done. The difficulty has been felt both by Common Law and Equity Judges. It is probable that in many cases the above rule will be found convenient. Compare Order XXXVI., Rule 6, *post*, p. 250.

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20. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a Judge for an order to the effect, and an order may be made accordingly.

The ordinary method of enforcing an order for discovery has been by attachment; but to procure an attachment is often tedious, troublesome, and expensive, and not always efficacious. In the Common Law Courts, the want of some readier method of compulsion has been much felt. In the case of plaintiffs, the Court would stay proceedings till they answered; but there was no corresponding method of dealing with defendants. The present rule affords an easy method of compulsion, applicable to most of the simple cases in which it was most needed.

21. Service of an order for discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

22. A solicitor upon whom an order against any party for discovery or inspection is served under the last rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

23. Any party may, at the trial of an action or issue, use in evidence any one or more of the answers of the opposite party to interrogatories without putting in the others: Provided always, that in such case the Judge may look at the whole of the answers, and if he shall be of opinion that any other of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in.

In the Common Law Courts no one has been able to use any answer of his opponent to interrogatories without using all of them. The consequence has been that what might be one of the great uses of interrogatories, viz., the saving of expense by proving by admission the facts not really in dispute, has been prevented; for the answers containing such admissions have stood side by side with others, which the party who has interrogated could not safely make a part of his case.

ORDER XXXII.

Order
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Admissions.

ADMISSIONS.

1. Any party to an action may give notice, by his own statement or otherwise, that he admits the truth of the whole or any part of the case stated or referred to in the statement of claim, defence, or reply of any other party.

In the first report of the Judicature Commission, p. 14, the Commissioners say:—"We think that a similar practice (to that as to admission of documents) might with advantage be extended to the admission of certain facts as well as documents; and therefore we recommend that if it be made to appear to the judge, at or before the trial of any case, that one of the parties was, a reasonable time before the trial, required in writing to admit any specific fact, and without reasonable cause refused to do so, the judge should either disallow to such party, or order him to pay (as the case may be) the costs incurred in consequence of such refusal." The present rule does not carry out this recommendation. It allows parties to make admissions of facts, but it does not apply to facts generally the system of notice to admit, embodied, as to documents, in the following rules.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the action may be, unless at the hearing or trial the Court certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

This and the two following rules correspond to ss. 117 and 118 of the C. L. P. Act, 1852, and Rule 29 of R. G. H T. 1853; and as to Chancery to s. 7, of 21 & 22 Vict. c. 27.

3. A notice to admit documents may be in the Form No. 12 in Appendix (B) hereto.

4. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents, and annexed to the affidavit, shall be sufficient evidence of such admissions.

ORDER XXXIII.

INQUIRIES AND ACCOUNTS.

Order
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The Court or a Judge may, at any stage of the proceedings in a cause of matter, direct any necessary inquiries or

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accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

As to the various modes in which questions in an action may be tried, see Order XXXVI., Rule 2, *post*, p. 248, and notes thereto.

By s. 66 of the Judicature Act, 1873, *ante*, p. 90:—

It shall be lawful for the Court, or any judge of the division to which any cause or matter pending in the said High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such district registrar as aforesaid; and in any such case the district registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the Court, as to the Court shall seem fit.

ORDER XXXIV.

QUESTIONS OF LAW.

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of Law.
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1. The parties may, after the writ of summons has been issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

The power of stating a special case in the Common Law Courts has hitherto depended upon 3 & 4 Will. 4, c. 42, s. 25, and ss. 46, 47, and 179 of the C. L. P. Act, 1852. This right has been constantly exercised; the ordinary practice being that, if the parties cannot agree upon the statement of the case, it is settled by an arbitrator. In Chancery, the power to proceed by special case has depended on 13 and 14 Vict., c. 35.

The provision enabling the Court to refer to documents is new in the Common Law Courts; hitherto the Court has been confined within the four corners of the case, so that it has often been necessary to set out in the case, or by way of appendix to the case, documents, only a part of which is likely to prove material. The power to draw inferences of fact has also not existed in Common Law Courts as of right, though it has commonly been specially reserved to the Court in well drawn cases. In cases stated in the Court of Chancery, the Court has had both these powers under ss. 8 and 14 of 13 and 14 Vict., c. 35.

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2. If it appear to the Court or a Judge, either from the statement of claim or defence, or reply or otherwise, that there is in any action a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

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The last rule enables the parties to state a case by consent. The present rule enables a judge to raise a question of law by special case or otherwise, without reference to consent.

3. Every special case shall be printed by the plaintiff, and signed by the several parties or their solicitors, and shall be filed by the plaintiff. Printed copies for the use of the Judges shall be delivered by the plaintiff.

Special cases in the Common Law Courts have not necessarily been printed hitherto. This rule is extended to special cases stated under 13 and 14 Vict., c. 35, by Additional Rules; Order IV., post, p. 391. As to printing, delivery of copies, and costs, see Additional Rules, Order V., post, p. 392.

4. No special case in an action to which a married woman, infant, or person of unsound mind is a party shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 13 in Appendix (B) hereto, and also if any married woman, infant, or person of unsound mind be a party to the action, producing a copy of the order giving leave to enter the same for argument.

Order
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ORDER XXXV.

PROCEEDINGS IN DISTRICT REGISTRIES.

1. Where an action proceeds in the district registry all proceedings, except where by these rules it is otherwise provided, or the Court or a Judge shall otherwise order, shall be taken in the district registry, down to and including the entry for trial of the action or issues therein; or if the plaintiff is entitled to enter final judgment or to obtain an order for an account by reason of the default of the defendant, then down to and including such judgment or order; and such judgment or order as last aforesaid shall be entered in the district registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in London. Where the writ of summons is issued out of a district registry and the plaintiff is entitled to enter interlocutory judgment under Order XIII., Rule 6, or where the action proceeds in the district registry and the plaintiff is entitled to enter interlocutory judgment under Order XXIX., Rule 4 or 5, in either case such interlocutory judgment, and, when damages shall have been assessed, final judgment shall be entered in the district registry, unless the Court or a Judge shall otherwise order.

Where an action proceeds in the district registry, final judgment shall be entered in the district registry, unless the Judge at the trial or the Court or a Judge shall otherwise order.

The Judicature Act, 1873, enacts as follows:—

s. 60. *And whereas it is expedient to facilitate the prosecution in country districts of such proceedings as may be more speedily, cheaply, and conveniently carried on therein, it shall be lawful for Her Majesty, by Order in Council, from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and Her Majesty may thereby appointed that a registrar of any County Court, or any registrar or prothonotary or district prothonotary of any local Court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, havin*

Act of the 15th and 16th Vict., cap. 80, section
acted to be distributed by the second of the
ed General Orders of the Court of Chancery.
When an Order shall have been made referring
business to the Official Referee in rotation, such
a duplicate of it, shall be produced to the
Clerk, whose duty it is to make such distribu-
tions; and such clerk shall (except in the
cases provided for by Rule 29c of this Order) endorse
a note specifying the name of the Official Referee
to whom such business is to be referred; and
such note so endorsed shall be a sufficient authority for
the Official Referee to proceed with the business so re-

The two last preceding Rules of this Order are not
inconsistent with the power of the Court, or of the Judge
in Chambers, to direct or transfer a reference to any one
of the said Official Referees, where it appears
to the Court or the Judge to be expedient; but every
reference or transfer shall be recorded in the manner
provided in Rule 2 of the second of the said Consoli-
dated Orders, and a note to that effect be endorsed
on the Order of Reference or transfer; and in case any

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12. Order XXXV., Rule 1, of "The Rules of the Supreme Court" is hereby annulled, and the following shall stand in lieu thereof :—

Order
XXXV.,
Rule 1a.

1. Where an action proceeds in the District Registry all proceedings, except where by any of the rules of the Supreme Court it is otherwise provided, or the Court or a Judge shall otherwise order, shall be taken in the District Registry, down to and including final judgment, and every final judgment and every order for an account by reason of the default of the defendant or by consent shall be entered in the District Registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in London.

Where the writ of summons is issued out of a District Registry and the plaintiff is entitled to enter interlocutory judgment under Order XIII., Rule 6, or where the action proceeds in the District Registry and the plaintiff is entitled to enter interlocutory judgment under Order XXIX., Rule 4 or 5, in either case such interlocutory judgment, and when damages shall have been assessed, final judgment shall be entered in the District Registry, unless the Court or Judge shall otherwise order.

Where an action proceeds in the District Registry, final judgment shall be entered in such Registry, unless the Judge at the trial or the Court or a Judge shall otherwise order.

Actions in the Queen's Bench, Common Pleas, and Exchequer Divisions shall be entered for trial with the Associates and not in the District Registries.

been a district registrar of the Court of Probate, or of the Admiralty Court, shall under this Act become and be a district registrar of the said High Court of Justice, or who shall hereafter be appointed such district registrar, shall and may be a district registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned. This section shall come into operation immediately upon the passing of this Act.

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Registries.
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S. 13 of the Act of 1875 amends this section by adding :—

Where any such order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said order, or any order in council amending the same.

Moreover, the registrar of any inferior Court of Record having jurisdiction in any part of any district defined by such order (other than a County Court) shall, if appointed by Her Majesty, be qualified to be a district registrar for the said district, or for any and such part thereof as may be directed by such order, or any order amending the same.

Every district registrar shall be deemed to be an officer of the Supreme Court, and be subject accordingly to the jurisdiction of such court, and of the divisions thereof.

s. 61. In every such district registry such seal shall be used as the Lord Chancellor shall from time to time, either before or after the time fixed for the commencement of this Act, direct, which seal shall be impressed on every writ and other document issued out of or filed in such district registry, and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such district registry, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

s. 62. All such district registrars shall have power to administer oaths and perform such other duties in respect of any proceedings pending in the said High Court of Justice or in the said Court of Appeal as may be assigned to them from time to time by rules of court, or by any special order of the Court.

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s. 64. *Subject to the rules of court in force for the time being, writs of summons for the commencement of actions in the High Court of Justice shall be issued by the district registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice, or by any judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to such action in the said High Court down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the district registrar, and recorded in the district registry, in such manner as may be prescribed by rules of court; and all such other proceedings in any such action as may be prescribed by rules of Court shall be taken and if necessary may be recorded in the same district registry.*

s. 66. *It shall be lawful for the Court, or any judge of the division to which any cause or matter pending in the said High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such district registrar as aforesaid; and in any such case the district registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the Court, as to the Court shall seem fit.*

As to the districts of District Registrars, see Order in Council, 12th Aug., 1875, *post*, p. 418.

As to when an action is to proceed in the district registry, see Order V., Rule 1, *ante*, p. 168, and notes thereto, and Order XII., *ante*, p. 181, where see also as to the issue of writs and the entrance of appearances in district registries.

2. Subject to the foregoing rules, where an action proceeds in the district registry the judgment and all such orders therein as require to be entered, except orders made by the district registrar under the authority and jurisdiction vested in him under these rules, shall be entered in London, and an office copy of every judgment and order

so entered shall be transmitted to the district registry to be filed with the proceedings in the action.

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3. Where an action proceeds in the district registry all writs of execution for enforcing any judgment or order therein shall issue from the district registry, unless the Court or a Judge shall otherwise direct. Where final judgment is entered in the district registry costs shall be taxed in such registry unless the Court or a Judge shall otherwise order.

4. Where an action proceeds in a district registry the district registrar may exercise all such authority and jurisdiction in respect of the action as may be exercised by a Judge at chambers, except such as by these Rules a Master of the Queen's Bench, Common Pleas, or Exchequer Divisions is precluded from exercising.

As to the jurisdiction of a master at chambers, see Order LIV., Rule 2, *post*, p. 297.

5. Every application to a district registrar shall be made in the same manner in which applications at chambers are directed to be made by these Rules.

See Order LIV., *post*, p. 297.

6. If any matter appears to the district registrar proper for the decision of a Judge, the registrar may refer the same to a Judge, and the Judge may either dispose of the matter or refer the same back to the registrar with such directions as he may think fit.

This and the three following rules assimilate, in the matters to which they refer, proceedings before a district registrar and before a master. See Order LIV., Rules 3, 4, 5, *post*, p. 298.

7. Any person affected by any order or decision of a district registrar may appeal to a Judge. Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the district registrar had jurisdiction only by consent. Such appeal shall be by summons within four days after the decision complained of, or such further time as may be allowed by a Judge or the registrar.

8. An appeal from a district registrar shall be no stay of proceedings unless so ordered by a Judge or the registrar.

9. Every district registrar and other officer of a district registry shall be subject to the orders and directions of

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the Court or a Judge as fully as any other officer of the Court, and every proceeding in a district registry shall be subject to the control of the Court or a Judge, as fully as a like proceeding in London.

10. Every reference to a Judge by or appeal to a Judge from a district registrar in any action in the Chancery Division shall be to the Judge to whom the action is assigned.

11. In any action which would, under the foregoing rules, proceed in the district registry, any defendant may remove the action from the district registry as of right in the cases, and within the times, following :

Where the writ is specially indorsed under Order III., Rule 6, and the plaintiff does not within four days after the appearance of such defendant give notice of an application for an order against him under Order XIV ; then such defendant may remove the action as of right at any time after the expiration of such four days, and before delivering a defence, and before the expiration of the time for doing so :

Where the writ is specially indorsed and the plaintiff has made such application as in the last paragraph mentioned, and the defendant has obtained leave to defend in manner provided by Order XIV ; then such defendant may remove the action as of right at any time after the order giving him leave to defend, and before delivering a defence and before the expiration of the time for doing so :

Where the writ is not specially indorsed any defendant may remove the action as of right at any time after appearance, and before delivering a defence, and before the expiration of the time for doing so.

12. Any defendant desirous to remove an action as of right under the last preceding rule may do so by serving upon the other parties to the action, and delivering to the district registrar, a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be removed accordingly: Provided, that if the Court or a Judge shall be satisfied that the defendant giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or Judge may order that the action may proceed in the district registry notwithstanding such notice.

13. In any case not provided for by the last two preceding rules, any party to an action proceeding in a district registry may apply to the Court or a Judge, or to the district registrar, for an order to remove the action from the district registry to London, and such Court, Judge, or registrar, may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just. Any party to an action proceeding in London may apply to the Court or a Judge for an order to remove the action from London to any district registry, and such Court or Judge may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall seem just.

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By the Judicature Act, 1873 :—

s. 65. *Any party to an action in which a writ of summons shall have been issued from any such district registry shall be at liberty at any time to apply, in such manner as shall be prescribed by rules of court, to the said High Court, or to a judge in chambers of the division of the said High Court to which the action may be assigned, to remove the proceedings from such district registry into the proper office of the said High Court; and the Court or judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein shall upon receipt of such order be transmitted by the district registrar to the proper office of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper office in London; or the Court or judge, if it be thought right, may thereupon direct that the proceedings may continue to be taken in such district registry.*

The power to remove as of right given by Rule 13 is limited to defendants, and can only be exercised within the periods defined. The power given by this section to apply to a judge, and by the above rule, to apply to the district registrar, for an order of removal is general.

14. Whenever any proceedings are removed from the district registry to London, the district registrar shall transmit to the proper officer of the High Court of Justice all original documents (if any) filed in the district registry, and a copy of all entries in the books of the district registry, of the proceedings in the action.

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Trial.

ORDER XXXVI.

TRIAL.

1. There shall be no local venue for the trial of any action, but when the plaintiff proposes to have the action tried elsewhere than in Middlesex, he shall in his statement of claim name the county or place in which he proposes that the action shall be tried, and the action shall, unless a Judge otherwise orders, be tried in the county or place so named. Where no place of trial is named in the statement of claim, the place of trial shall, unless a Judge otherwise orders, be the county of Middlesex. Any order of a Judge, as to such place of trial, may be discharged or varied by a Divisional Court of the High Court.

Hitherto Common Law actions have been either local, in which the venue could only be laid in the county in which the cause of action arose, though the trial might be ordered to take place elsewhere (1 Chitty's Archbold, p. 307, 11th edit.) ; or transitory, in which the plaintiff might lay his venue where he pleased, subject to the power of the Court or a judge to order it to be changed.

The practice as to changing the venue hitherto has been that either party might apply for an order for that purpose. The plaintiff, if the application was his, must show reasonable ground for the change; 2 Chitty's Archbold, p. 1345, 4th edit. If the application was the defendant's, he had to show distinctly a preponderance of convenience in favour of trying where he proposed, instead of where the venue was laid; *Church v. Barnett*, Law Rep. 6 C. P. 116. See the cases fully collected in Day's C. L. P. Acts, pp. 93 *et seq.*, 4th edit.

The words of the above rule seem to leave the matter entirely in the discretion of the judge, to be exercised according to the balance of convenience.

2. Actions shall be tried and heard either before a Judge or Judges, or before a Judge sitting with assessors, or before a Judge and Jury, or before an official or special Referee, with or without assessors.

This rule speaks of actions being tried and heard. The term trial alone is used throughout the following rules.

It may be convenient to state here, in a summary form, the effect of the principal provisions of the Acts and Rules relating to the mode of trying questions of fact.

The trial of an action may be :—

Before a judge or judges ;

Before a judge with assessors (See rule 28, *post*, p. 256, and note thereto) ;

Before a judge (*i.e.*, a single judge, unless a trial before several be specially ordered. Rule 7, *post*, p. 250,) with a jury ;

Before an official referee (See rules 30, *et seq.*, *post*, p. 256, and note thereto) ;

Before a special referee (See rules 30, *et seq.*, *post*, p. 256, and note thereto) ;

Before an official or special referee with assessors. (See rule 28, *post*, p. 256, and note thereto).

Trial by jury in Chancery 12th Ed 1

See W. N. 24/2/97 p. 88

The plaintiff can select the place of trial by naming it in his claim ; but the Court or a judge may change it. Rule 1, *ante*.

The plaintiff may likewise choose the mode of trial by giving notice of trial by one of the modes mentioned. Rule 3, *post*.

If the plaintiff fails to do so within six weeks after the close of the pleading, the defendant may give notice of trial and choose the mode. Rule 4, *post*.

The party to whom notice of trial by any mode, other than a jury, is given, may, within four days, by notice, require that the issues of fact be tried by a jury. Rules 3 and 4, *post*.

If neither party has required the issues of fact to be tried by a jury, the judge may order the trial to be by any other mode than that of which notice has been given. Rule 5, *post*.

A judge may order different questions of fact to be tried in different ways, and may direct the order in which and the place at which the several issues of fact shall be tried. Rule 6, *post*.

A judge may order any question of law to be determined before the trial of questions of fact. Order XXXIV., Rule 2.

A judge may direct the trial without a jury of any question which could hitherto, without consent, be tried without a jury. Rule 26, *post*.

A judge, either before or at the trial, may order an issue of fact to be tried by a jury. Rule 27, *post*.

Subject to these rules, where a question of fact, or partly of law and partly of fact, is in issue, any party may by leave of a judge require the issue to be tried at the assizes or the Middlesex or London sittings ; s. 29 of the Judicature Act, 1873, *ante*, p. 69. The same thing may be done by consent, though no facts are in issue ; *ibid*.

A judge may at any time order any question of fact, or mixed law and fact, to be tried at the assizes or at the sittings in London or Middlesex. Rule 29, *post*.

A judge may at any stage of the action direct any necessary inquiries or account to be made or taken, and that either in London or in a district registry. Order XXXIII. ; s. 66 of the Judicature Act, 1873, *ante*, p. 90.

A judge may, subject to the rules the effect of which has been briefly stated, refer any question for inquiry and report to an official or special referee. See s. 56 of the Act of 1873, and Rules 30, *et seq.*, *post*, p. 256, and notes thereto.

A judge may by consent, or where a prolonged investigation of documents or accounts or any scientific or local investigation is required, may without consent, order any question of fact or any question of account to be tried before an official or special referee ; s. 57 of the Act of 1873, *ante*, p. 87. See rules 30, *et seq.*, *post*, p. 256, and note.

3. Subject to the provisions of the following Rules, the plaintiff may, with his reply, or at any time after the close of the pleadings, give notice of trial of the action, and thereby specify one of the modes mentioned in Rule 2 ; and the defendant may, upon giving notice within four days from the time of the service of the notice of trial, or within such extended time as a Court or Judge may allow, to the effect that he desires to have the issues of fact tried before a Judge and Jury, be entitled to have the same so tried. 20. 3. 746; 406. 531

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Trial.

*See Rule 26: & 30. D. 127*Order
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4. Subject to the provisions of the following Rules, if the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as a Court or Judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, and thereby specify one of the modes mentioned in Rule 2; and in such case the plaintiff, on giving notice within the time fixed by Rule 3 that he desires to have the issues of fact tried before a Judge and Jury, be entitled to have the same so tried.

5. In any case in which neither the plaintiff nor defendant has given notice under the preceding Rules that he desires to have the issues of fact tried before a Judge and Jury, or in any case within the 57th section of the Act, if the plaintiff or defendant desires to have the action tried in any other mode than that specified in the notice of trial, he shall apply to the Court or a Judge for an order to that effect, within four days from the time of the service of the notice of trial, or within such extended time as a Court or Judge may allow.

6. Subject to the provisions of the preceding Rules, the Court or a Judge may, in any action at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the place or places for such trial or trials, and in all cases may order that one or more issues of fact be tried before any other or others.

As to ordering a question of law to be argued before trying the facts, see Order XXXIV., Rule 2, *ante*, p. 240.

7. Every trial of any question or issue of fact by a jury shall be held before a single Judge, unless such trial be specially ordered to be held before two or more Judges.

8. Notice of trial shall state whether it is for the trial of the action or of issues therein; and in actions in the Queen's Bench, Common Pleas, and Exchequer Divisions, the place and day for which it is entered for trial. It may be in the Form No. 14 in Appendix (B), with such variations as circumstances may require.

9. Ten days' notice of trial shall be given, unless the party to whom it is given has consented to take short

Court," the word "ten" is hereby substituted Rule 5a.
word "three" before the word "folios."

ORDER XXIII.—DISCONTINUANCE.
A defendant may sign judgment for the costs of Order
if it is wholly discontinued, or for the costs XXIII.,
if the matter withdrawn, if the action be not Rule 2.
discontinued.

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13. The Defendant, instead of giving notice of trial, may apply to the Court or Judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or a Judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or Judge may seem just.

notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a Judge. Short notice of trial shall be four days' notice.

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These are the periods hitherto in use in the Common Law Courts; C. L. P. Act, 1852, s. 97; R. G. H. T. 1853, Rule 35.

10. Notice of trial shall be given before entering the action for trial.

11. Notice of trial for London or Middlesex shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the action may come on for trial in its order upon the list.

By the Judicature Act, 1873:—

s. 30. *Subject to rules of court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Middlesex and London, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many judges as the business to be disposed of may render necessary. Any Judge of the High Court of Justice sitting for the trial of causes and issues in Middlesex or London, at any place heretofore accustomed, or to be hereafter determined by rules of court, shall be deemed to constitute a Court of the said High Court of Justice.*

The periods of vacation are prescribed in Order LXI., *post*, p. 308. As to the lists for trial in London and Middlesex, see Rule 16.

12. Notice of trial elsewhere than in London or Middlesex shall be deemed to be for the first day of the then next assizes at the place for which notice of trial is given.

As to the assizes, see s. 29 of the Judicature Act, 1873, *ante*, p. 69, and notes thereto.

13. No notice of trial shall be countermanded, except by consent, or by leave of the Court or a Judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just.

Hitherto notice of trial might be countermanded by a four days' notice; C. L. P. Act, 1852, s. 98; R. G., H. T. 1853, Rule 34.

See as to this and several other points in which the plaintiff's power of controlling the conduct of an action is curtailed, note to Order XXIII., *ante*, p. 221.

14. If the party giving notice of trial for London or Middlesex omits to enter the action for trial on the day or

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—

day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last rule, within four days enter the action for trial.

15. If notice of trial is given for elsewhere than in London or Middlesex, either party may enter the action for trial. If both parties enter the action for trial, it shall be tried in the order of the plaintiff's entry.

16. The list or lists of actions for trial at the sittings in London and Middlesex respectively shall be prepared and the actions shall be allotted for trial without reference to the Division of the High Court to which such actions may be attached.

17. The party entering the action for trial shall deliver to the officer a copy of the whole of the pleadings in the action, for the use of the Judge at the trial. Such copy shall be in print, except as to such parts, if any, of the pleadings as are by these Rules permitted to be written.

As to how far pleadings may be in writing, see Order XIX., Rule 5, *ante*, p. 207; Order XXVII., Rule 8, *ante*, p. 224.

18. If, when an action is called on for trial, the plaintiff appears, and the defendant does not appear, then the plaintiff may prove his claim, so far as the burden of proof lies upon him.

Hitherto, in actions of ejectment, if the defendant did not appear at the trial, the plaintiff has been entitled to a verdict without any proof; R. G., H. T. 1853, Rule 114.

19. If, when an action is called on for trial, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim then he may prove such claim so far as the burden of proof lies upon him.

20. Any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the Court or a Judge upon such terms as may seem fit, upon an application made within six days after the trial; such application may be made either at the assizes or in Middlesex.

21. The Judge may, if he think it expedient for the interests of justice, postpone or adjourn the trial for such time, and upon such terms, if any, as he shall think fit.

22. Upon the trial of an action, the Judge may, at or after such trial, direct that judgment be entered for any or either party, as he is by law entitled to upon the findings, and either with or without leave to any party to move to set aside or vary the same, or to enter any other judgment, upon such terms, if any, as he shall think fit to impose; or he may direct judgment not to be entered then, and leave any party to move for judgment. No judgment shall be entered after a trial without the order of a Court or judge.

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20. B. D. 177

By the Judicature Act, 1873 :—

s. 29. *Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any judge or judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act; and any commissioner or commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the said High Court of Justice; and, subject to any restrictions or conditions imposed by rules of court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the judge or judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a commissioner or commissioners as aforesaid or at sittings to be held in Middlesex and London as hereinafter in this Act mentioned, and such question or issue shall be tried and determined accordingly.*

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

s. 30. *Any Judge of the High Court of Justice sitting for the trial of causes and issues in Middlesex or London, at any place heretofore accustomed, or to be hereafter determined by rules of court, shall be deemed to constitute a Court of the said High Court of Justice.*

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s. 46. *Subject to any rules of court, any judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case, or point in a case, to be argued before a Divisional Court; and any Divisional Court of the said High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued.*

This last section is, however, qualified by s. 22 of the Act of 1875, which provides that nothing in the Acts or rules "shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the judge to the jury, before whom the same shall come for trial, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues: Provided also that the said right may be enforced either by motion in the High Court of Justice, or by motion in the Court of Appeal founded upon an exception entered upon or annexed to the record." As to the effect of the two sections taken together, see note, *ante*, p. 82.

Hitherto in the Court of Chancery the judge at the hearing has disposed both of questions of fact and of questions of law together. He has decided not only whether the plaintiff has proved the truth of the case, or the defendant the truth of the defence alleged by him, but also whether the claim or the defence is valid in law.

At Common Law it has been otherwise. The judge at *Nisi Prius* has been a commissioner to try the issues of fact joined between the parties as appearing upon the record, and to direct a verdict for plaintiff or defendant accordingly. He has of course had power to decide questions of law arising incidentally in the course of the trial of the issues of fact, and in many other ways to deal with matters of law; but the broad question whether the plaintiff's claim, assuming his facts proved, is good in law, or whether the defendant's defence, if true in fact, is good in law, it has not been within his province to determine. Those questions could be brought before the Court *in banc* by demurrer, or by motion for judgment *non obstante veredicto*, and sometimes in other ways, but not before the judge at the trial. This strict separation of issues of law from issues of fact has by no means always been convenient. It is often, if not generally, more convenient that the whole of the law of the case should be decided when the facts are ascertained. By s. 29 of the Judicature Act, 1873, *ante*, p. 69, every commissioner of assize, and by s. 30 a judge at the London or Middlesex sittings, constitutes a Court of the High Court. And the present rule leaves, it will be observed, three courses open to the judge at the trial of an action:—

To direct judgment to be entered for the party entitled to it simply;

To direct such judgment, subject to leave to move to set it aside;

To direct that no judgment be then entered, and leave any party to move for judgment.

In the first case, when judgment is ordered absolutely, where the registrar or other officer to enter judgment is not the officer at the trial, the associate's certificate will under Rule 24 of this Order entitle the successful party to enter judgment accordingly. See Order XLI., *post*, p. 272. And execution may issue forthwith, unless execution is

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stayed; Order XLII., Rule 15, *post*, p. 276. As to moving for a new trial by a party dissatisfied, see Order XXXIX., *post*, p. 267. And as to when a party may move to set aside such a judgment and enter another, see Order XL., Rules 4 and 5, *post*, p. 270. A motion for either of these purposes will be only for a rule *nisi* in the first instance; Order XXXIX., Rule 1; Order XL., Rule 6, *post*, pp. 267, 270.

In the second case, where the judge orders judgment subject to leave to move, the judgment may be entered as in the last case, upon the associate's certificate, Rule 25; Order XLI., *post*, p. 272. As to the practice, on moving to set aside the judgment, see Order XL., Rule 2, *post*, p. 269. The motion in such case will be upon notice without any rule *nisi*; Order LIII., Rule 2, *post*, p. 295.

As to moving for judgment where the judge orders no judgment to be entered, see Order XL., Rule 3, *post*, p. 269. There will be no rule *nisi*; Order LIII., Rule 2, *post*, p. 295.

This rule, it will be observed, applies only where the trial is of the action. A trial may still be ordered of specific issues only.

23. Upon every trial at the assizes, or at the London and Middlesex sitting of the Queen's Bench, Common Pleas, or Exchequer Division, where the officer present at the trial is not the officer by whom judgments ought to be entered, the associate shall enter all such findings of fact as the Judge may direct to be entered, and the directions, if any, of the Judge as to judgment, and the certificates, if any, granted by the Judge, in a book to be kept for the purpose.

24. If the Judge shall direct that any judgment be entered for any party absolutely, the certificate of the associate to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate may be in the Form No. 15 in Appendix (B) hereto.

25. If the Judge shall direct that any judgment be entered for any party subject to leave to move, judgment shall be entered accordingly upon the production of the associate's certificate.

Hitherto when a cause was entered for trial, a copy of the record showing the issues to be tried, called the *nisi prius* record, was deposited with the officer. After the trial the *nisi prius* record was endorsed with the *postea*, showing the result of the trial, and delivered to the successful party as soon as he was entitled to sign judgment. The possession of the *postea* proved his right to judgment, and was the warrant to the proper officer to enter the judgment. There will for the future be no *nisi prius* record, though under Rule 17 of this Order a copy of the pleadings for the use of the judge is to be deposited on entering the action for trial. The certificate provided by these rules will take the place of the *postea*. As to entry of judgment, see Order XLI., *post*, p. 272.

26. The Court or a Judge may, if it shall appear desirable, direct a trial without a jury of any question or issue

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of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the Act could, without any consent of parties, be tried without a jury.

See note to Rule 2, *ante*, p. 248.

27. The Court or a Judge may, if it shall appear either before or at the trial that any issue of fact can be more conveniently tried before a jury, direct that such issue shall be tried by a Judge with a jury.

See note to Rule 2, *ante*, p. 248.

28. Trials with assessors shall take place in such manner and upon such terms as the Court or a Judge shall direct.

By the Judicature Act. 1873.

s. 56. *The High Court or the Court of Appeal may also, in any such cause or matter as aforesaid in which it may think it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such . . . assessors shall be determined by the Court.*

See Rule 2, *ante*, p. 248, and note thereto.

29. In any cause the Court or a Judge of the division to which the cause is assigned may, at any time or from time to time, order the trial and determination of any question or issue of fact, or partly of fact and partly of law, by any commissioner or commissioners appointed in pursuance of the 29th section of the said Act, or at the sittings to be held in Middlesex or London, and such question or issue shall be tried and determined accordingly.

See s. 29, *ante*, p. 69; and note to Rule 2, *ante*, p. 248.

30. Where any cause or matter, or any question in any cause or matter, is referred to a Referee, he may, subject to the order of the Court or a Judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial *de die in diem*, in a similar manner as in actions tried by a jury.

15. When an Order shall have been made referring any business to the Official Referee in rotation, such Order, or a duplicate of it, shall be produced to the Registrar's Clerk, whose duty it is to make such distribution as aforesaid; and such clerk shall (except in the case provided for by Rule 29c of this Order) endorse thereon a note specifying the name of the Official Referee in rotation to whom such business is to be referred; and the Order so endorsed shall be a sufficient authority for the Official Referee to proceed with the business so referred.

16. The two last preceding Rules of this Order are not to interfere with the power of the Court, or of the Judge at Chambers, to direct or transfer a reference to any one in particular of the said Official Referees, where it appears to the Court or the Judge to be expedient; but every such reference or transfer shall be recorded in the manner mentioned in Rule 2 of the second of the said Consolidated General Orders, and a note to that effect be endorsed on the Order of Reference or transfer; and in case any such reference or transfer shall have been or shall be made to any one in particular of the said referees, then the clerk in making the distribution of the business according to such rotation as aforesaid shall have regard to any such reference or transfer.

XXXI.—DISCOVERY AND INSPECTION.

XXXI., Rule 7, of "The Rules of the Order XXXI., Rule 7a."
"the word "ten" is hereby substituted
"three" before the word "folios."

V.—PROCEEDINGS IN DISTRICT REGISTRIES.

XXXV., Rule 1, of "The Rules of the Order

Supreme Court" is hereby annulled, and shall stand in lieu thereof:—

1. Where an action proceeds in the District Registry, down to and including every final judgment and every order made on account of the default of the defendant, in the same manner as if it were an action proceeding in London would be entered in the District Registry.

Where the writ of summons is issued in the District Registry and the plaintiff is entitled to enter judgment under Order XIII., Rule 6, or where the action proceeds in the District Registry and the plaintiff is entitled to enter interlocutory judgment under Order XXIX., Rule 4 or 5, in either case such judgment, and when damages shall have

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14. The business to be referred to the Official Referees appointed under the Supreme Court of Judicature Act, 1873, shall be distributed among such Official Referees in rotation by the clerks to the Registrars of the Supreme Court, Chancery Division, in like manner in all respects as the business referred to conveyancing counsel appointed under the Act of the 15th and 16th Vict., cap. 80, section 41, is directed to be distributed by the second of the Consolidated General Orders of the Court of Chancery.

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By the Judicature Act, 1873,
n s. 56. *Subject to any rules of court and to such right as may now exist to have particular cases submitted to the verdict of a jury, any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice or before the Court of Appeal, may be referred by the Court or by any Divisional Court or Judge before whom such cause or matter may be pending, for inquiry and report to any official or special referee, and the report of any such referee may be adopted wholly or partially by the Court, and may (if so adopted) be enforced as a judgment by the Court. The remuneration (if any) to be paid to such special referees shall be determined by the Court.*

s. 57. *In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or a judge, conveniently be made before a jury, or conducted by the Court through its ordinary officers, the Court or a judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein to be tried either before an official referee, to be appointed as hereinafter provided, or before a special referee to be agreed on between the parties; and any such special referee so agreed on shall have the same powers and duties and proceed in the same manner as an official referee. All such trials before referees shall be conducted in such manner as may be prescribed by rules of court, and subject thereto in such manner as the Court or judge ordering the same shall direct.*

s. 58. *In all cases of any reference to or trial by referees under this Act the referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of such reference or trial as shall be prescribed by rules of court or (subject to such rules) by the Court or judge ordering such reference or trial; and the report of any referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of a jury.*

s. 59. *With respect to all such proceedings before referees and their reports, the Court or such judge as aforesaid shall have, in addition to any other powers, the same or*

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the like powers as are given to any Court whose jurisdiction is hereby transferred to the said High Court with respect to references to arbitration and proceedings before arbitrators and their awards respectively, by the Common Law Procedure Act, 1854.

The provisions of the C. L. P. Act, 1854, with respect to arbitrations are contained in ss. 3 to 17. They are as follows :—

- s. 3. “ If it be made appear, at any time after the issuing of the writ, to the satisfaction of the Court or a judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account, which cannot conveniently be tried in the ordinary way, it shall be lawful for such Court or judge, upon such application, if they or he think fit to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the Court, or in country causes to the judge of any County Court, upon such terms as to costs and otherwise as such Court or judge shall think reasonable ; and the decision or order of such Court or judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred.”

This is repealed as to County Court Judges by 21 & 22 Vict. c. 74, s. 5. As to the classes of cases to which this section applies, see note on the section in Day’s C. L. P. Acts, p. 426, 4th edit.

- s. 4. “ If it shall appear to the Court or a judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a jury, or by a judge upon the consent of both parties as hereinbefore provided, it shall be lawful for such Court or judge to direct a case to be stated, or an issue or issues to be tried ; and the decision of the Court upon such case, and the finding of the jury or judge upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive.”
- s. 5. “ It shall be lawful for the arbitrator upon any compulsory reference under this Act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the Superior Courts of Law or Equity at Westminster, if he shall think fit, and if it is not provided to the contrary, to state his award, as to the whole or any part thereof, in the form of a special case for the opinion of the Court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the Court.”

See Rule 34, *post*, p. 264. Hitherto error has not lain from the decision of the Court upon a case so stated. But see now s. 19 of the Judicature Act, 1873, *ante*, p. 54.

- s. 6. “ If upon the trial of any issue of fact by a judge under this Act it shall appear to the judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, at his discre-

tion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of the Court, or, in country causes, to a judge of any County Court, upon such terms, as to costs and otherwise, as such judge shall think reasonable; and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; and it shall be competent for the judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made."

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This section seems to be practically superseded by the larger provision of ss. 56 and 57 of the Judicature Act, 1873, set out above.

- s. 7. "The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorizing the reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of Court or judge's order."
- s. 8. "In any case where reference shall be made to arbitration as aforesaid, the Court or a judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the said arbitrator, upon such terms, as to costs and otherwise, as to the said Court or judge may seem proper."
- s. 9. "All applications to set aside any award made on a compulsory reference under this Act shall and may be made within the first seven days of the term next following the publication of the award to the parties, whether made in vacation or term; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties."
- s. 10. "Any award made on a compulsory reference under this Act may, by authority of a judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed."

This power seems to be imported into all references under the Judicature Act, 1873, by s. 59, *supra*.

- s. 11. "Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence any action at law or suit in equity against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred, or any of them, it shall be lawful for the Court in which action or suit is brought, or a judge thereof, on application by the defendant

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or defendants, or any of them, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action or suit, and still is, ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such Court or judge may seem fit; provided always, that any such rule or order may at any time afterwards be discharged or varied as justice may require."

- s. 12. "If in any case of arbitration the document authorizing reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator; or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorizing the reference do not show that it was intended that such a vacancy should not be supplied, and the parties or arbitrators respectfully do not appoint a new one; then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator respectively; and if within seven clear days after such notice shall have been served, no arbitrator, umpire, or third arbitrator be appointed, it shall be lawful for any judge of any of the Superior Courts of Law or Equity at Westminster, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire, or third arbitrator as the case may be, and such arbitrator, umpire, and third arbitrator respectively shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties."
- s. 13. "When the reference is or is intended to be to two arbitrators, one appointed by each party, it shall be lawful for either party, in the case of the death, refusal to act, or incapacity of any arbitrator appointed by him, to substitute a new arbitrator, unless the document authorizing the reference show that it was intended that the vacancy should not be supplied; and if on such a reference one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on

both parties as if the appointment had been by consent ; provided, however, that the Court or a judge may revoke such appointment, on such terms as shall seem just."

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- s. 14. "When the reference is to two arbitrators, and the terms of the document authorising it do not show that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner."
- s. 15. "The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed, and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the parties may by consent in writing enlarge the term for making the award ; and it shall be lawful for the superior Court of which such submission, document, or order is or may be made a rule or order, or for any judge thereof, for good cause to be stated in the rule or order for enlargement, from time to time to enlarge the term for making the award ; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed to be an enlargement for one month ; and in any case where an umpire shall have been appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree."
- s. 16. "When any award made on any such submission, document, or order of reference as aforesaid, directs that possession of any lands or tenements, capable of being the subject of an action of ejectment shall be delivered to any party, either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, it shall be lawful for the Court of which the document authorizing the reference is or is made a rule or order to order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorising the reference, to deliver possession of the same to the party entitled thereto, pursuant to the award, and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue, and possession shall be delivered by the sheriff as on a judgment in ejectment."
- s. 17. "Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of any one of the Superior Courts of Law or Equity at Westminster, on the application of any party thereto, unless such agreement or submission contain words

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purporting that the parties intend that it should not be made a rule of court; and if in any such agreement or submission it is provided that the same shall or may be made a rule of one in particular of such Superior Courts, it may be made a rule of that Court only; and if when there is no such provision a case be stated in the award, for the opinion of one of the Superior Courts, and such Court be specified in the award, and the document authorizing the reference have not, before the publication of the award to the parties been made a rule of court, such document may be made a rule only of the Court specified in the award; and when in any case the document authorizing the reference is or has been made a rule or order of any one of such Superior Courts, no other of such Courts shall have any jurisdiction to entertain any motion respecting the arbitration or award."

A submission which can merely be made a rule of court under that section is not thereby rendered irrevocable under 3 & 4 Will. 4, c. 42, s. 29; that section applying only to a submission by rule of court in an action, or a submission containing an agreement that it may be made a rule of court, *Mills v Bayley*, 2 H. & C. 36; *Thomson v. Anderson*, Law Rep., 9 Eq. 523; *Re Rouse and Meier*, Law Rep., 6 C. P. 212.

Three kinds of references have heretofore been in habitual use (besides those under the Lands' Clauses Act, and other Acts of the same class):—

First.—References to arbitration by consent of controversies, as to which no action or suit is pending, but in which, if the conditions of the Acts be complied with, the submission may be made a rule of court, and the award may be enforced under 9 & 10 Will. 3 c. 15, and sec. 17 of the C. L. P. Act, 1854, *supra*.

Such arbitrations as these do not appear to be affected by the Act or the rules; the clauses relating to references being seemingly limited to references occurring in actions or matters pending before the Court.

Secondly.—References of actions by consent of the parties.

Such references have usually taken one or another of three forms. The submission has been of the action simply; or of the action and all matters in difference, so as to refer all controversies though not included in the action; or of the action and all matters in difference with power to say what shall be done, so as to enable the arbitrator not only to determine rights or award damages, as the case may be, but to direct the doing of such acts as may be desirable.

Thirdly.—Compulsory references to the Masters of the Common Law Courts in cases in which the matter in dispute consists wholly or in part of matters of mere account under ss. 3 to 10 of the C. L. P. Act, 1854, *supra*.

There appears to be nothing in the Act or rules to take away the power of compulsory reference to a Master under the last-mentioned sections.

But the new legislation, in the first place, largely extends the power of compulsory reference, and allows such references to others besides Masters; for by s. 56 of the Act, *supra*, subject to the right of trial by jury, any question may be referred for inquiry or report. And by s. 57, *supra*, any question or issue of fact, or any question of account, may be compulsorily referred in any cause of

matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot conveniently be made before a jury, or conducted by the Court through its other ordinary officers. And in either case the reference may be either to an official referee (as to whose appointment, see s. 83 of the Judicature Act, 1873, *ante*, p. 106), or to a special referee agreed upon by the parties.

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In the second place, material changes are made in the practice of arbitration and the respective powers of the arbitrator and the Court, whether the reference of an action or a question in an action be compulsory or by consent.

Hitherto an arbitrator's decision on facts, on the admission of evidence, on law, has in ordinary cases been final and conclusive. Unless the submission gave the parties the right to require him to state a case for the opinion of the Court under s. 5 of the C. L. P. Act, 1854, set out above, or unless he chose in his discretion to do so, there has been no means of reviewing his decision. The only thing that could be done was to set aside the award if he exceeded his authority, or was guilty of misconduct, and in a few other cases.

The new provisions place an arbitrator to whom questions in an action, or the trial of an action, is referred, in an entirely different position.

If a question be referred to him for inquiry and report under s. 56, set out above, the Court may or may not adopt his report.

If the trial of the action, or of any questions in it, be referred to him under s. 57, set out above, or under Rule 2, *ante*, p. 248, he becomes for the purpose an officer of the Court, and amenable to its control; s. 58, set out above.

His report upon a question of fact is, by the same section, equivalent to a verdict. And it may be set aside, as the verdict of a jury might be set aside.

Further, the trial of an action by a referee is to be conducted in the same manner as before a judge, and he is to have the same authority as a judge; Rules 31 and 32, *post*. Having found the facts, therefore, the duty of the referee will be, under Rule 22, *ante*, p. 253, either to direct simply a judgment for any party, or a judgment subject to leave to move, or to direct no judgment, and leave any party to move.

If on the facts found he has applied the law improperly, and directed a wrong judgment, the Court may correct him and enter the proper judgment (Order XL., Rule 5) without any leave reserved. If he reserves leave to move or abstains from ordering any entry of judgment, application may be made to the Court to give the proper judgment; Order XL., Rules 2, 3.

If he states a case or finds the facts specially, the Court may require his reasons and explanations, and if necessary send the matter back to him or another referee; Rule 34, *post*.

31. Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken at any trial before a Referee, and the attendance of witnesses may be enforced by subpoena, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials before a Judge of the High Court, but not so as to make the tribunal of the Referee a public Court of Justice.

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To compel the attendance of a witness before an arbitrator it has hitherto been necessary to obtain a judge's order under 3 & 4 Will. 4, c. 42, s. 4.

32. Subject to any such order as last aforesaid, the Referee shall have the same authority in the conduct of any reference or trial as a Judge of the High Court when presiding at any trial before him.

33. Nothing in these Rules contained shall authorise any Referee to commit any person to prison or to enforce any order by attachment or otherwise.

34. The Referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct ; and the Court shall have power to require any explanation or reasons from the Referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other Referee.

The powers given by this section are analogous to, but more extensive than those conferred by s. 5 of the C. L. P. Act, 1854, *supra*. That section simply enabled an arbitrator to state his award as to the whole or any part thereof in the form of a special case for the opinion of the Court. And the Court could only deal with the case as stated. Under this rule the Court may require of the arbitrator explanations or reasons, or send the matter back for re-trial or reconsideration, and to another referee if it thinks fit. The Court, too, may enter the order of the Court as it thinks fit.

See also s. 58 of the Judicature Act, 1873, and note to Rule 30, *ante*, p. 263, as to the control of the Court over referees.

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Evidence
Generally.

ORDER XXXVII.

EVIDENCE GENERALLY.

1. In the absence of any agreement between the parties, and subject to these rules, the witnesses at the trial of any action or at any assessment of damages, shall be examined *vivâ voce* and in open court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in Court

ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner; provided that where it appears to the Court or Judge that the other party bonâ fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

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Evidence
Generally.

By the Act of 1875, in substitution for s. 72 of the Judicature Act, 1873 :—

s. 20. *Nothing in this Act or in the first schedule hereto, or in any rules of court to be made under this Act, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen on juries.*

As to taking evidence by affidavit by consent, see the next Order.

As to depositions, see Rule 4 of this Order, and notes thereto.

2. Upon any motion, petition, or summons evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

Cross-examination in the case provided for by this rule, has hitherto in Chancery been before an examiner, 15 & 16 Vict., c. 86, s. 40.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

The power given by the last clause of this rule, is, in the absence of any special order of the Court or judge, to be exercised by the taxing officer; Additional Rules, *post*, p. 413.

4. The Court or a Judge may, in cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before any officer of the Court, or any other person or persons, and at any place, of any witness or person, and may order any depo-

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Generally.

sition so taken to be filed in the Court, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a Judge may direct.

This rule is a repetition in somewhat different language of the 1 Will. IV., c. 22, s. 4, the statute under which the Common Law Courts have hitherto had power to order the depositions of witnesses to be taken.

In the Common Law Courts, witnesses have been examined before the trial :

1. When within the jurisdiction ;
2. When out of the jurisdiction.

Within the jurisdiction, depositions have been taken when it has been shown that a necessary witness was either going abroad, or was from illness, age, or other infirmity, likely to be unable to attend the trial.

Commissions to examine witnesses abroad have been issued whenever such examination has been shown to be necessary for the purposes of justice.

As to the practice under 1 Will. IV. c. 22, see 1 Chitty's Archbold, 329, *et seq.*, 11th edit.

A deposition to be used under this order must be printed, unless otherwise ordered, or unless it has been previously used in manuscript ; Additional Rules, Orders I. and II., *post*, p. 391. As to mode of printing, delivery of copies, costs, &c., see *ibid.*, Order V.

ORDER XXXVIII.

EVIDENCE BY AFFIDAVIT.

Order
XXXVIII.
Evidence by
Affidavit.

102.D.278, 604 1. Within fourteen days after a consent for taking evidence by affidavit as between the plaintiff and the defendant has been given, or within such time as the parties may agree upon, or a Judge in Chambers may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.

By Order XXXVII., Rule 1, subject to the qualifications there stated, the evidence in an action cannot be taken by affidavit without consent. The effect of these orders upon affidavit evidence is very material.

In the Common Law Courts such evidence has not hitherto been in use at all upon the trial of a cause. It may for the future be used by consent, subject to the provisions of this order.

In the Court of Chancery it has been the kind of evidence ordinarily used. For the future it can only be adopted by consent at the trial of an action. And the cross-examination of witnesses will in all cases be in open Court at the hearing, instead as constantly heretofore before an examiner.

2. The defendant within fourteen days after delivery of such list, or within such time as the parties may agree upon, or a Judge in Chambers may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

3. Within seven days after the expiration of the said fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.

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4. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing, requiring the production of the deponent for cross-examination before the Court at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

5. The party to whom such notice as is mentioned in the last preceding rule is given, shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined.

6. When the evidence in any action is under this order taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time or times after the close of the evidence as in other cases is by these Rules provided after the close of the pleadings.

Affidavit evidence taken under this order is to be printed by the parties; Additional Rules, Order V., *post*, p. 392; where see as to printing, delivery of copies, costs, &c. By Order II., *ibid.*, affidavits need not be printed, if they have been previously used in manuscript.

As to the time for giving notice of trial, see Order XXXVI., Rules 3 and 4, *ante*, p. 249.

Any other affidavit than those required by this rule to be printed, may be printed, either by consent, or by an order; Additional Rules, Order III., *post*, p. 391.

ORDER XXXIX.

MOTION FOR NEW TRIAL.

1. A party desirous of obtaining a new trial of any cause tried in the Queen's Bench, Common Pleas, or Exchequer Divisions on which a verdict has been found by a

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jury, or by a Judge without a Jury, must apply for the same to a Divisional Court by motion for an order calling upon the opposite party to show cause at the expiration of eight days from the date of the order, or so soon after as the case can be heard, why a new trial should not be directed. Such motion shall be made within four days after the trial, if the Divisional Court is then sitting, or within the first four days after the commencement of the sitting of the Divisional Court next after the trial, or within such extended time as the Court or a Judge may allow.

This is in accordance with the practice hitherto prevailing in the Common Law Courts, as are also Rules 2 and 5 of this order. In Chancery, an application for a re-hearing has been made to the judge who heard the cause.

As to the constitution of Divisional Courts, see ss. 40, 41, 43, 44 of the Judicature Act, 1873, *ante*, pp. 79 and 81.

2. A copy of such order shall be served on the opposite party within four days from the time of the same being made.

3. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial of the action; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give final judgment as to part thereof, and direct a new trial as to the other part only.

4. A new trial may be ordered on any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

Rules 3 and 4 introduce material changes. Hitherto a misdirection by the judge in point of law, or the improper admission or rejection of evidence in any material matter, has been ground for a new trial as of right. Under the first part of Rule 3 this practice is changed. Again, it often happens that there may have been a miscarriage affecting only a part of the claim in question, and not at all affecting the rest, or affecting some one question in the cause and not at all another. Hitherto the Courts have only had the power to grant a new trial of the action generally. Under these rules they can grant a new trial as to so much of the matter as the miscarriage affects.

5. An order to show cause shall be a stay of proceedings in the action, unless the Court shall order that it not be so as to the whole or any part of the action.

ORDER XL.

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MOTION FOR JUDGMENT.

1. Except where by the Act or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment. *This is proper Court note*
There are no pleadings *Order 24/2/77 & 88*

Judgment may be obtained by default in various cases provided for by the foregoing rules; Orders XIII., XXIX., XXXI., Rule 20, *ante*, pp. 185, 228, 238. Or judgment may be pronounced, or directed to be entered, by the judge, at or after the trial; Order XXXVI., Rule 22, *ante*, p. 253. But there are many cases to which neither of those methods applies. Default may be made in pleadings, in a case not of such a simple character that the proper judgment can be entered by the parties entitled themselves, without the intervention of a Court; the decision of the Court may be necessary to say what the proper relief is; see Order XXIX., Rules 10, 11, 13, *ante*, p. 229. The judge at the trial of the action may not have ordered judgment to be entered, or he may have ordered judgment to be entered for one side, with leave to the other side to move to set it aside and enter some other judgment; Order XXXVI., Rule 22, *ante*, p. 253. Or he may have ordered judgment to be entered absolutely; but that judgment may be wrong in law, having regard to the facts actually found; *post*, Rules 4 and 5. Or there may not be one single trial of the action, but different issues or questions may have been ordered to be determined in different ways or at different times; Order XXXVI., Rule 6, *ante*, p. 250, Rule 7, *post*, p. 271. To any of such cases the present order will apply, and the judgment of the Court may be obtained upon motion.

As to the time of moving for judgment, see Rule 9 of this Order.

As to when the motion is to be for a rule to show cause, and when not, see Rule 6 of this Order, and Order LIII., Rule 2, *post*, p. 295.

As to the practice on motions, see *ibid.*

2. Where at the trial of an action the Judge or a Referee has ordered that any judgment be entered subject to leave to move, the party to whom leave has been reserved shall set down the action on motion for judgment, and give notice thereof to the other parties within the time limited by the Judge in reserving leave, or if no time has been limited, within ten days after the trial. The notice of motion shall state the grounds of the motion, and the relief sought, and that the motion is pursuant to leave reserved.

3. Where at the trial of an action the Judge or Referee abstains from directing any judgment to be entered, the plaintiff may set down the action on motion for judgment. If he does not so set it down and give notice thereof to

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the other parties within ten days after the trial, any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

See Order XXXVI., Rule 22, *ante*, p. 253.

Under the practice hitherto in force in the Common Law Courts, although a point were reserved by the judge at the trial, the motion to the Court in pursuance of it could only be for a rule *nisi* in the first instance. Now by Order LIII., Rule 2, and the above rules, such motion will be made for a rule absolute, and will be made on notice simply. And hitherto the motion for a rule *nisi* has been, as will still substantially be the case with rules for new trials, within four days if the trial were in term, within the first four days of the next term if the trial were not in term. Under these rules the motion for judgment must be entered and notice of it given within ten days after the trial, unless the judge limits a different time, whether the Court is sitting or not.

4. Where at the trial of an action before a jury the Judge has directed that any judgment be entered, any party may, without any leave reserved, move to set aside such judgment, and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason of the Judge having caused the finding to be entered wrongly, with reference to the finding of the jury upon the question or questions submitted to them.

5. Where at the trial of an action the Judge or a Referee has directed that any judgment be entered, any party may, without any leave reserved, move to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong.

According to the practice of the Common Law Courts hitherto, unless leave were reserved by the judge at the trial, any party dissatisfied with the trial could, under any circumstances, only move for a new trial, never for a verdict or judgment. The above two rules alter this practice in two instances. It may often happen that the issue agreed upon may be general in its terms, for example, partnership or no partnership at a given time. When the case is fully gone into it may be found that the question the jury have really to determine is some smaller one, say for instance the date of execution of a particular deed. Having taken the opinion of the jury upon this last question, it may become the duty of the judge to construe the deed and direct the finding upon the issue to be entered accordingly. And upon this finding the result of the cause may depend. Again when all the issues have been found the judge may, under Order XXXVI., Rule 22, direct such judgment to be entered as any party is by law entitled to. In either of these cases, if the judge is mistaken his mistake may under the above rules be corrected without leave reserved, and without a new trial.

6. On every motion made under either of the last two preceding Rules, the order shall be an order to show cause,

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and shall be returnable in eight days. The motion shall be made within four days after the trial if the Divisional Court is then sitting, or within the first four days after the commencement of the sitting of the Divisional Court next after the trial, or within such extended time as a Court or Judge may allow.

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Motion for judgment will, in cases other than those provided for by this rule, be upon notice without any rule to show cause; Order LIII., Rule 2. A motion for a new trial will, under Order XXXIX., Rule 1, be for a rule to show cause.

7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down the action on motion for judgment as soon as such issues or questions have been determined. If he does not so set it down, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down the action on motion for judgment, and give notice thereof to the other parties.

8. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down the action on motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other questions of fact.

9. No action shall, except by leave of the Court or a Judge, be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do.

10. Upon a motion for judgment, or for a new trial, *34. D. 05* the Court may, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be

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of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made as it may think fit.

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11. D. 274/100
2cc. D. 686
3cc D 112.

11. Any party to an action may at any stage thereof apply to the Court or a Judge for such order as he may, upon any admissions of fact in the pleadings, be entitled to, without waiting for the determination of any other question between the parties. The foregoing Rules of this Order shall not apply to such applications, but any such application may be made by motion, so soon as the right of the party applying to the relief claimed has appeared from the pleadings. The Court or a Judge may, on any such application, give such relief, subject to such terms, if any, as such Court or Judge may think fit. 5cc D. 343

Order XLI.
Entry of
Judgment.

ORDER XLI.

ENTRY OF JUDGMENT.

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the action other than any petition or summons; such copy shall be in print, except such parts (if any) of the pleadings as are by these Rules permitted to be written: Provided that no copy need be delivered of any pleading a copy of which has been delivered on entering any previous judgment in such action. The forms in Appendix (D) hereto may be used, with such variations as circumstances may require.

All pleadings are in the first instance to be delivered simply between parties; Order XIX., Rule 7, *ante*, p. 208, and not filed in Court. By the present rule if the action goes on to judgment, and there have been pleadings delivered, a copy of the pleadings is to be delivered to the officer for the purpose, it may be presumed, of being filed.

2. Where any judgment is pronounced by the Court or a Judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, and the judgment shall take effect from that date.

3. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which

the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

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Judgment.

4. Where under the Act or these Rules, or otherwise, it is provided that any judgment may be entered or signed upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required he shall enter judgment accordingly.

5. Where by the Act or these Rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

6. Any judgment of nonsuit, unless the Court or a Judge otherwise directs, shall have the same effect as a judgment upon the merits for the defendant; but in any case of mistake, surprise, or accident, any judgment of nonsuit may be set aside on such terms, as to payment of costs and otherwise, as to the Court or a Judge shall seem just.

This is a material change. Hitherto a judgment of non-suit left the plaintiff free to commence another action for the same cause. See note to Order XXIII., *ante*, p. 221.

ORDER XLII.

Order XLII
Execution.

EXECUTION.

1. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court whose jurisdiction is transferred by the said Act might have been enforced at the time of the passing thereof.

2. A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorised by law, by attachment.

See Order XLIV., *post*, p. 279; Order XLVII., *post*, p. 286.

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Execution.

3. A judgment for the recovery, or for the delivery of the possession of land may be enforced by writ of possession.

4. A judgment for the recovery of any property other than land or money may be enforced :

By writ for the delivery of the property :

By writ of attachment :

By writ of sequestration.

As to writ of delivery see Order XLIX., *post*, p. 287 ; as to attachment, see Order XLIV., *post*, p. 279 ; and as to Sequestration, see Order XLVII., *post*, p. 286.

5. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

6. In these Rules the term " writ of execution " shall include writs of fieri facias, capias, elegit, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term " issuing execution against any party " shall mean the issuing of any such process against his person or property as under the preceding Rules of this Order shall be applicable to the case.

7. Where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

8. Where a judgment is against partners in the name of the firm execution may issue in manner following :

(a.) Against any property of the partners as such :

(b.) Against any person who has admitted on the pleadings that he is, or has been adjudged to be a partner :

- (c.) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear. Order XLII.
Execution.

If the party who has obtained judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

As to proceedings by and against partners generally, see note to Order IX., Rule 6, *ante*, p. 176.

9. No writ of execution shall be issued without the production to the officer by whom the same should be issued, of the judgment upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the judgment creditor to execution.

10. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a præcipe for that purpose. The præcipe shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firms against whose goods, the execution is to be issued; and shall be signed by the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The forms ~~of the writs and orders may be used with such variations~~

ORDER XLII.—EXECUTION.

17. Order XLII., Rule 10, of "The Rules of the Supreme Court" shall be read as if the words "or on behalf of" had been inserted after the words "signed by." Order
XLII.,
Rule 10.

... shall be indorsed with the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

This is in accordance with R. G., H. T. 1853, Rule 73.

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12. Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix (F) hereto may be used, with such variations as circumstances may require.

It is so provided as to all writs by Order II., Rule 8, *ante*, p. 164.

13. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered.

This is taken from the C. L. P. Act, 1852, s. 123.

14. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4*l.* per cent. per annum from the time when the judgment was entered up, provided that in cases where there is an agreement between the parties that more than 4*l.* per cent. interest shall be secured by the judgment, then the indorsement may be accordingly to levy the amount of interest so agreed.

This is in accordance with R. G., H. T. 1853, Rule 76.

15. Every person to whom any sum of money or any costs shall be payable under a judgment, shall immediately after the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of fieri facias, or one or more writ or writs of elegit to enforce payment thereof, subject nevertheless as follows :

- (a.) If the judgment is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period.
- (b.) The Court or Judge at the time of giving judgment, or the Court or a Judge afterwards, may give leave to issue execution before, or may stay execution until any time after the expiration of the periods hereinbefore prescribed.

Hitherto, where judgment followed upon the verdict of a jury, execution could not issue till fourteen days after verdict, unless the judge at the trial, or the Court or a judge afterwards ordered it to issue earlier ; C. L. P. Act, 1852, s. 120 ; R. G., H. T. 1853, Rule 57. It might be stayed for any longer period.

Under the new provision, in all cases alike, the judge at the trial may order judgment to be entered ; Order XXXVI., Rule 22, *ante*, p. 253. If, as will be the case on circuit and at the Nisi Prius sittings in London and Middlesex, the officer in Court is not the officer by whom judgments are entered, judgment will be entered

at the proper office on the production of the associate's certificate of the judge's directions; Order XXXVI., Rules 23, 24, 25, *ante*, p. 255; Order XLI., *ante*, p. 272. And, by the above rule, execution may issue as soon as judgment is entered. No fixed interval is provided for between any of these successive steps. It would appear, therefore, to be necessary for the future that, in all cases, any one wishing to avoid immediate execution should apply for a stay of execution under the above rule.

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16. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the Court or a Judge, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his attorney, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

This rule is in substance the same as s. 124 of the C. L. P. Act, 1852. It will be observed that a writ of execution may be renewed by leave without the restrictions imposed in the case of a writ of summons under the new practice; Order VIII., Rule 1, *ante*, p. 174.

17. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

This is the same as s. 125 of the C. L. P. Act, 1852.

18. As between the original parties to a judgment, execution may issue at any time within six years from the recovery of the judgment.

This is in substance the same as s. 128 of the C. L. P. Act, 1852.

19. Where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in an action may

Order XLII. Execution. — be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise, as shall seem just.

The practice in reviving pecuniary judgments for the purpose of execution, after the lapse of six years or the death of parties, has hitherto been governed by ss. 129 to 134 of the C. L. P. Act, 1852. Under those provisions the party seeking execution could apply to the Court or a judge for leave to enter a suggestion to the effect that such party was shown to be entitled to execution, and to allow execution to issue. And if the case was made clear, the suggestion and the consequent execution were allowed. If the case were not made clear, the suggestion and execution consequent upon it were disallowed, and the party was left to his writ of revivor. This was a new action in which by the ordinary processes of pleading the questions in dispute were brought to issue and decided.

The above rule preserves alternative processes, according as the right to execution is or is not sufficiently clear to be enforced summarily by a judge. But a somewhat simpler process is provided. If the case be clear the judge may order execution to issue. If it be not he may direct an issue to try the right.

20. Every order of the Court or a Judge, whether in an action or matter, may be enforced in the same manner as a judgment to the same effect.

A rule of court has hitherto in a Common Law Court been enforceable by attachment for contempt. And as since the Debtors' Act, 1869, 32 & 33 Vict. c. 62, a debtor cannot generally be arrested for debt, there has been practically no direct means of enforcing a rule for payment of money. Execution may for the future issue upon it.

21. In cases other than those mentioned in Rule 18 any person not being a party in an action, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to the action; and any person not being a party in an action, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to the action.

22. No proceeding by *audita querela* shall hereafter be used: but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief and upon such terms as may be just.

Audita querela was a process in the nature of an action, whereby a party against whom judgment had been obtained might prevent execution on the ground of some matter of defence which there was

no opportunity of raising in the original action; see *Turner v. Davies*, 2 Order XLII. Notes to Williams' Saunder, p. 439. By R. G., H. T., 1852, Rule 79, Execution. —
 this process could only be issued by leave of the Court or a judge;
 and it has been almost wholly disused.

23. Nothing in any of the Rules of this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

24. Nothing in this Order shall affect the order in which writs of execution may be issued.

ORDER XLIII.

WRITS OF FIERI FACIAS AND ELEGIT.

Order
XLIII.
Writs of
Fieri Facias
and Elegit.
—

1. Writs of fieri facias and of elegit shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed.

2. Writs of venditioni exponas, distringas nuper vicecomitem, fieri facias de bonis ecclesiasticis, sequestrari facias de bonis ecclesiasticis, and all other writs in aid of a writ of fieri facias or of elegit, may be issued and executed in the same cases and in the same manner as heretofore.

ORDER XLIV.

ATTACHMENT.

Order
XLIV.
Attachment.
—

1. A writ of attachment shall have the same effect as a writ of attachment issued out of the Court of Chancery has heretofore had.

2. No writ of attachment shall be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued.

An attachment is a writ directed to the sheriff, commanding him to attach the person against whom it is issued, and have him before the Court to answer his contempt. The writ must be returned by the sheriff, like other writs of execution. The practice in Chancery has hitherto been governed by Order, 7th Jan., 1870. See 1 Dan. Ch. Pr., pp. 907, *et seq.*, 5th edit.

The second of the above rules introduces a change in the Chancery Division; inasmuch as a writ can never, for the future, issue as of right without an order, granted after notice to the party. This has been already the rule in the Common Law Courts, except in the case of an attachment against a sheriff for disobeying an order to return a writ, in which case the rule has been made absolute *ex parte*. See R. G., H. T. 1853, Rule 168.

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Order XLV.
Attachment
of Debts.

ORDER XLV.

ATTACHMENT OF DEBTS.

1. Where a judgment is for the recovery by or payment to any person of money, the party entitled to enforce it may apply to the Court or a Judge for an order that the judgment debtor be orally examined as to whether any and what debts are owing to him, before an officer of the court, or such other person as the Court or Judge shall appoint; and the Court or Judge may make an order for the examination of such judgment debtor, and for the production of any books or documents.

The power of enforcing judgments by attaching debts due by third persons to the judgment debtor has existed in the Common Law Courts since 1854. It was given by the C. L. P. Act, 1854; and the procedure has hitherto been governed in part by that Act, and in part by the C. L. P. Act, 1860. The present order applies the practice of attachment of debts to all divisions of the Court. The several rules are in substance a reproduction of the sections relating to the subject in the C. L. P. Acts of 1854 and 1860; with the exception that s. 28 of the C. L. P. Act, 1860, which enabled a judge to refuse to interfere by attachment where, from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious, is not repeated.

The above rule is taken from s. 60 of the C. L. P. Act, 1854.

It has been held under that section that there was no power to examine an officer of a Corporation as to debts due by it to a judgment debtor; *Dickson v. Neath and Brecon Ry. Co.*, Law Rep., 4 Ex. 87.

2. The Court or a Judge may, upon the ex parte application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge or an officer of the Court, as such Court or Judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

This is taken from s. 61 of the C. L. P. Act, 1854.

What the Court or judge is empowered to attach is *debts* owing or accruing to the judgment creditor. Rent due by a tenant is a debt attachable; *Mitchell v. Lee*, Law Rep., 2 Q. B. 259. So is money in the hands of a sheriff the proceeds of an execution levied by him; *Murray v. Simpson*, 8 Ir. C. L., App. xlv. Upon a judgment against a company, money in the hands of an official liquidator may be attached; *ex parte Turner*, 2 D. F. & J. 354. Upon a judgment against an executor, as such, a debt due to the testator's estate may be attached; *Burton v. Roberts*, 6 H. & N. 93; *Fowler v. Roberts*, 2 Giff. 226. And where such an order of attachment has been made its enforcement will not be restrained on the ground that a decree for administration has been made after the order, or it would seem after the judgment, though before the order, *ibid.*

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of Debts.

After the analogy of a *fi. fa.*, under which the goods of any one of those against whom it is issued may be taken, a debt due to one of several judgment debtors may be attached to satisfy the judgment against all; *Miller v. Myna*, 1 E. & E. 1075.

Unliquidated damages cannot be attached: *Johnson v. Diamond*, 11 Ex. 73; even though their amount has been ascertained by the verdict of a jury, but no judgment yet had; *Jones v. Thompson*, E. B. & E. 63. Independently of the Judicature Act, 1873, ss. 24 and 25, it has been held that a debt can only be attached to which the judgment debtor is himself entitled both at law and in equity, and not one which he has assigned; *Hirsch v. Coates*, 18 C. B. 757. As to pensions and superannuation allowances see *Innes v. E. I. Company*, 17 C. B. 351; *Dent v. Dent*, Law Rep. 1 P. & D. 366; *Ex parte Hawker*, Law Rep. 7 Ch. 214.

By the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 233, seamen's wages whether due or accruing cannot be attached. Nor, by 33 & 34 Vict. c. 30, can workmen's wages.

The section in express terms applies to debts accruing as well as debts actually owing; see *Sparks v. Younge*, 8 Ir. C. L. 251; *Tapp v. Jones*, Q. B. E. T. 1875.

The section authorises a judge to do two things—first, to attach the debt, as to the effect of which see the next rule; secondly, to order its payment to the judgment creditor. This latter power may be exercised by the same order which attaches the debt, or by a subsequent one. It may also be exercised with respect to debts accruing as well as debts owing. Such debts may be ordered to be paid when they fall due; and it is not necessary to wait and obtain a fresh order for payment of each as it becomes payable; *Tapp v. Jones*, Q. B. E. T. 1875.

3. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the Court or Judge shall direct, shall bind such debts in his hands.

This is taken from s. 62 of the C. L. P. Act, 1854.

The effect of the words "shall bind such debts" has often undergone discussion. Under the Bankruptcy Act, 1849, it was held that a judgment creditor who had obtained an order attaching a debt, or an order for payment, was a creditor holding security, but not a creditor having a lien within the meaning of s. 184 of that Act; and that, therefore, if bankruptcy intervened before actual payment the assignee, not the judgment creditor, was entitled; *Holmes v. Tatton*, 5 E. & B. 65; *Turner v. Jones*, 1 H. & N. 878; *Tilbury v. Brown*, 30 L. J. (Q. B.) 46. But a payment by the garnishee in obedience to an order to pay,

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of Debts.

and to avoid an execution, where he either had no notice of adjudication in bankruptcy, or what was the same thing the registration of a deed of arrangement under the Bankruptcy Act, 1861, or where he had no opportunity of applying to set aside the order, was a good payment as far as he was concerned; *Wood v. Dunn*, Law Rep., 2 Q. B. 73. The enactments of the Bankruptcy Act, 1869, as to the rights of secured creditors, are entirely different from those in force, when the above cited cases were decided; *Slater v. Pinder*, Law Rep., 7 Ex. 95, *Ex parte Roche*, Law Rep., 6 Ch. 795. And under the present law a creditor who has obtained a garnishee-order is in the same position as an execution creditor who has seized. He has a charge on the debt which is good against the trustee in bankruptcy; *Emanuel v. Bridger*, Law Rep. 9 Q. B. 286; *Stevens v. Philips*, Law Rep. 10 Ch. 417. *Ex parte Greenway*, Law Rep. 16 Eq. 619, seems to be overruled.

The debts are bound from the date of the order of attachment, and no set-off, and nothing affecting the state of the accounts between the garnishee and the judgment debtor arising after that date can be taken into account; *Tapp. v. Jones*, Q. B. E. T. 1875; though it would seem that a set-off existing at that date might avail; *Sampson v. Seaton and Beer Ry. Co.*, Law Rep. 10 Q. B. 23. The garnishee cannot set-off a debt due to him by the judgment creditor; *Ibid.*

As to the effect of an attachment upon an attorney's lien, see *Hough v. Edward*, 1 H. & N. 171; *Eisdell v. Coningham*, 28 L. J. Ex. 213; *Sympson v. Prothero*, 26 L. J. Ch. 671.

The order binds the defendant in the hands of the garnishee only; and, therefore, if the amount has been paid into the Court of Chancery, it is not bound, and that Court will not interfere to give effect to the order; *Stevens v. Philips, ubi supra.*

4. If the garnishee does not forthwith pay into court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Court or Judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment debt.

This is taken from s. 63 of the C. L. P. Act, 1854.

5. If the garnishee disputes his liability, the Court or Judge instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined,

This is taken from s. 64 of the C. L. P. Act, 1854.

6. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any

third person has a lien or charge upon it, the Court or Judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

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This is taken from s. 29 of the C. L. P. Act, 1860.

7. After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the Court or Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding Rules of this Order, and may bar the claim of such third person, or make such other order as such Court or Judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or Judge shall think just and reasonable.

This is taken from s. 30 of the C. L. P. Act, 1860.

8. Payment made by, or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor, to the amount paid or levied, although such proceeding may be set aside, or the judgment reversed.

This is taken from s. 65 of the C. L. P. Act, 1854.

9. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer.

This is taken from s. 66 of the C. L. P. Act, 1854.

10. The costs of any application for an attachment of debts, and of any proceedings arising from, or incidental to such application, shall be in the discretion of the Court or a Judge.

This is taken from s. 67 of the C. L. P. Act, 1854.

ORDER XLVI.

CHARGING OF STOCK OR SHARES AND DISTRINGAS.

1. An order charging stock or shares may be made by any Divisional Court, or by any Judge, and the proceedings

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—
Judgment,
a charge on
public stock
and shares in
companies,
&c., by
order of a
judge.

Order of
judge to be
made in first
instance
ex parte
and on no-
tice to the
bank or com-
pany to
operate as a
distringas.

Order may
be dis-
charged or
varied.

for obtaining such order shall be such as are directed, and the effect shall be such as is provided by 1 & 2 Vict. c. 110, ss. 14 and 15, and 3 & 4 Vict. c. 82, s. 1.

By 1 & 2 Vict. c. 110, s. 14 :—

“If any person against whom any judgment shall have been entered up in any of Her Majesty’s superior Courts at Westminster shall have any Government stock, funds, or annuities, or any stock or shares of, or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a judge of one of the superior Courts, on the application of any judgment creditor, to order that such stock, funds, annuities, or shares, or such of them or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon ; and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor, provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order.”

By s. 15 :—“Every order of a judge charging any Government stock, funds, or annuities, or any stock or shares in any public company, under this Act, shall be made, in the first instance, *ex parte*, and without any notice to the judgment debtor, and shall be an order to show cause only ; and such order, if any Government stock, funds, or annuities, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is to be affected by such order, shall restrain the Governor and Company of the Bank of England from permitting a transfer of such stock in the meantime, and until such order shall be made absolute or discharged ; and if any stock or shares of or in any public company, standing in the name of the judgment debtor in his own rights, or in the name of any person in trust for him, is or are to be affected by any such order, shall in like manner restrain such public company from permitting a transfer thereof ; and that if, after notice of such order to the person or persons to be restrained thereby, or in case of corporations to any authorized agent of such corporation, and before the same order shall be discharged or made absolute, such corporation, or person or persons, shall permit any such transfer to be made ; then, and in such case, the corporation, or person or persons so permitting such transfer, shall be liable to the judgment creditor for the value or the amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment ; and that no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor ; and, further, that unless the judgment debtor shall, within a time to be mentioned in such order, show to a judge of one of the said superior Courts sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his attorney, or agent, be made absolute ; provided that any such judge shall, upon the application of the judgment debtor, or any person interested, have full power to discharge or vary such order, and to award such costs upon such application as he may think fit.”

By 3 & 4 Vict. c. 82, s. 1, passed to remove doubts as to

the construction of the former Act, it is enacted that "The aforesaid provisions of the said Act shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent, as well in any such stocks, funds, annuities, or shares as aforesaid, as also in the dividends, interest or such produce of any annual stock, funds, annuities or shares; and whenever any such judgment debtor shall have any estate, right, title, or interest, vested or contingent in possession, remainder, or reversion, in, to, or out of any such stocks, funds, annuities, or shares, as aforesaid, which now are or shall hereafter be standing in the name of the Accountant-General of the Court of Chancery, or the Accountant-General of the Court of Exchequer, or in, to, or out of the dividends, interest, or annual produce thereof, it shall be lawful for such judge to make any order as to such stock, funds, annuities, or shares, or the interest, dividends, or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment debtor; provided always, that no order of any judge as to any stock, funds, annuities, or shares standing in the name of the Accountant-General of the Court of Chancery, or the Accountant-General of the Court of Exchequer, or as to the interest, dividends, or annual produce thereof, shall prevent the Governor and Company of the Bank of England, or any public company, from permitting any transfer of such stocks, funds, annuities, or shares, or payment of the interest, dividends, or annual produce thereof, in such manner as the Court of Chancery or the Court of Exchequer respectively may direct, or shall have any greater effect than if such debtor had charged such stock, funds, annuities, or shares, or the interest, dividends, or annual produce thereof, in favour of the judgment creditor, with the amount of the sum to be mentioned in any such order."

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Charging of
Stock or
Shares and
Distringas.

The things which may be charged under these sections are stock or shares which the judgment debtor has standing in his own name in his own right, or in the name of any person in trust for him (under the first Act), and (under the second) the interest of the judgment debtor whether in possession, remainder, or reversion, vested or contingent, in such stock, funds, annuities, or shares, or in the dividends, interest, or annual produce of them. Such property standing in the name of the Accountant-General of the Court of Chancery in which the judgment debtor had any interest was also expressly included in the second Act. And s. 6 of 35 & 36 Vict., c. 44, seems to continue the same right as to shares in the hands of the Paymaster-General, who now fills the place of the Accountant-General.

In *Watts v. Porter*, 3 E. & B. 743, the majority of the Court of Queen's Bench held that stock standing in the name of trustees for the judgment debtor, but which he had mortgaged, though no notice of the mortgage had been given to the trustees, might be charged, so as to give the judgment creditor priority over the mortgagee. But this view was disapproved in *Bevan v. Lord Oxford*, 6 D. M. & G. 507; see *Kindertey v. Jervis*, 22 Beav. 1. If, notwithstanding the assignment, the judgment debtor still retains an equitable interest, that interest at least may be charged; *Baker v. Tynte*, 2 E. & E. 897; *Cragg v. Taylor*, Law Rep., 2 Ex. 131. But where a testatrix left her whole estate and effects to trustees in trust to pay debts and legacies, with a direction to pay the legacies as soon as her means could be converted into cash, and as to the residue in trust for the judgment debtor and others, it was held

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—

that the judgment debtor, though interested in the proceeds of the estate, was not interested in stock and shares of which the estate in part consisted, so as to make them chargeable; *Dixon v. Wrench*, Law Rep., 4 Ex. 154. In *Fuller v. Earle*, 7 Ex. 796, and *Cragg v. Taylor*, Law Rep., 1 Ex. 148, it was held in Courts of Law that it was no answer to an application to charge shares of which the judgment debtor was the registered holder, to show that he held them subject to trusts. But those cases only decided that a Court of Law would make the charge, leaving a Court of Equity to give to it its proper effect, and determine all questions of priority. See also *Rogers v. Holloway*, 5 M & G. 292. For the future every Court must recognise equitable rights incidentally appearing; s. 24, sub-s. 4, of the Judicature Act, 1873, *ante*, p. 59. Whether this change may affect the granting of an order in such cases may give rise to a question.

Hitherto the application, if in aid of a Common Law judgment, could only be made to a Common Law Judge; a Judge in Chancery had no jurisdiction; *Miles v. Prestland*, 4 M. & Cr. 431. The above rule is express that the application may be to any judge. Compare, however, s. 11, sub-s. 1, of the Amendment Act, 1875, *ante*, p. 133.

A charging order when made absolute operates as from the date of the order *nisi*, and binds the stock charged as from that date; *Haley v. Barry*, Law Rep., 3 Ch. 452. A charging order upon dividends of stock standing in the books of the Bank of England in the names of legal owners in trust for the judgment debtor does not throw any duty upon the Bank as to the distribution of the fund; it is bound simply to pay to the legal owners; *Churchill v. Bank of England*, 11 M. & W. 323.

2. Any person claiming to be interested in any stock transferable at the Bank of England standing in the name of any other person may sue out a writ of distringas pursuant to the statute 5 Vict. c. 8, as heretofore. Such writ to be issued out of any office of the High Court in London, where writs of summons are issued.

The above rule as to distringas occurs amongst rules relating to execution. But the process of distringas is in no sense of the nature of execution. It is simply a process by which any person claiming stock or shares may restrain the Bank of England or other company from parting with the stock or shares or any dividend upon them. The practical effect of a distringas is to secure that the property is not dealt with without notice to the person putting on the distringas. The writ was originally issued out of the Equity side of the Exchequer. But when the equity jurisdiction of that Court was taken away, the Act intended no doubt to be referred to in the above rule, transferred the power of issuing it to the Court of Chancery. But the rule speaks of 5 Vict. c. 8, by mistake, it would seem, for c. 5. The practice is governed by the Act and by Order XXVII. of the Consolidated Orders. See *Morgan's Chancery Acts and Orders*, p. 508, 4th edit.; 2 *Daniel's Chancery Practice*, 1537, 5th edit. The above rule allows a distringas to be obtained in any division, but it will be observed, only against the Bank of England.

ORDER XLVII.

WRIT OF SEQUESTRATION.

Where any person is by any judgment directed to pay

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Writ of Se-
questration.
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money into Court or to do any other act in a limited time, and after due service of such judgment refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment shall at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery has heretofore had, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration have heretofore been dealt with by the Court of Chancery.

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Writ of Se-
questration.

A writ of sequestration is a writ directed to commissioners requiring them to take possession of all the property real and personal of the person against whom it is issued. Originally it was a mere process of contempt analogous to attachment, for compelling obedience to the orders of the Court. But, upon final process, it has long been the practice to apply the proceeds of the sequestration in satisfaction of the liability in respect of which it issues. See 1 Dan. Ch. Pr. pp. 912 *et seq.*, 5th edit.

ORDER XLVIII.

WRIT OF POSSESSION.

Order
XLVIII.
Writ of
Possession.

1. A judgment that a party do recover possession of any land may be enforced by writ of possession in manner heretofore used in actions of ejectment in the Superior Courts of Common Law.

For the form of this writ see No. 7, in Appendix F., *post*, p. 387.

2. Where by any judgment any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment and that the same has not been obeyed.

ORDER XLIX.

WRIT OF DELIVERY.

Order
XLIX.
Writ of
Delivery.

A writ for delivery of any property other than land or money may be issued and enforced in the manner heretofore in use in actions of detinue in the Superior Courts of Common Law.

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XLIX.
Writ of
Delivery.

This writ was given by s. 78 of the C. L. P. Act 1854, which is as follows:—

“The Court or a judge shall have power, if they or he see fit so to do, upon the application of the plaintiff in any action for the detention of any chattel, to order that execution shall issue for the return of the chattel detained, without giving the defendant the option of retaining such chattel upon paying the value assessed, and that if the said chattel cannot be found, and unless the Court or a judge should otherwise order, the sheriff shall distrain the defendant by all his lands and chattels in the said sheriff’s bailiwick, till the defendant render such chattel, or, at the option of the plaintiff that he cause to be made of the defendant’s goods the assessed value of such chattel; provided that the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant’s goods the damages, costs, and interest in such action.”

For the form of this writ see No. 8 in Appendix F., *post*, p. 357.

as to section 142 D

Order L.
Change of
Parties by
Death, &c.

ORDER L.

CHANGE OF PARTIES BY DEATH, &c.

*as to Divisional
for want of process
after 1875 4 Ch. D.
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1. An action shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title pendente lite.

Both in the Common Law Courts and in the Court of Chancery, the old and inconvenient methods of making good a suit which has become defective by reason of death or otherwise have long been superseded by simple inexpensive methods of procedure. But the procedure has been different in the several courts.

In the Common Law Courts the practice has been governed by ss. 135 to 142 of the C. L. P. Act, 1852, and s. 92 of the C. L. P. Act, 1854. Under those enactments the procedure has varied slightly according to the nature of the defect which has occurred, and the stage at which it has occurred. In the case of death, the plaintiff was empowered to enter a suggestion of the death, and proceed with the action in the name of or against the proper parties. And the truth of that suggestion might have been traversed and tried. If the plaintiff omitted to enter the necessary suggestion, the defendant might by summons require him to do so, and in default might do so himself.

In Chancery the matter has been governed by s. 52 of 15 & 16 Vict. c. 86, and Cons. Ord., Order XXXII, Rule 1. See notes thereto in Morgan’s Chancery Acts and Orders pp. 210 and 526, 4th edit.

The present Order adopts in substance the Chancery procedure.

There is nothing in the above rule to alter the existing law as to what causes of action do and what do not survive.

Where after judgment it is merely desired to issue execution, and rights or liabilities have become changed by death or otherwise, the person seeking to issue execution may proceed under Order XLII., Rule 19, *ante*, p. 277.

2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to an action, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved in the action, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party to the action, or be served with notice thereof in such manner and form as hereinafter prescribed, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the action as may be just.

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Change of
Parties by
Death, &c

3. In case of an assignment, creation, or devolution of any estate or title pendente lite the action may be continued by or against the person to or upon whom such estate or title has come or devolved.

4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of an action, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action, it becomes necessary or desirable that any person not already a party to the action should be made a party thereto, or that any person already a party thereto should be made a party thereto in another capacity, an order that the proceedings in the action shall be carried on between the continuing parties to the action, and such new party or parties, may be obtained ex parte on application to the Court or a Judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence.

5. An order so obtained shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties to the action, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following Rules, be binding on the persons served therewith, and every person served therewith, who is not already a party to the action shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

6. Where any person who is under no disability or

Order L.
Change of
Parties by
Death, &c.

under no disability other than coverture, or being under any disability other than coverture, but having a guardian ad litem in the action, shall be served with such order, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the service thereof.

7. Where any person being under any disability other than coverture, and not having had a guardian ad litem appointed in the action, is served with any such order, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the appointment of a guardian or guardians ad litem for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person.

Order LI.
Transfers
and Consoli-
dation.

ORDER LI.

TRANSFERS AND CONSOLIDATION.

1. Any action or actions may be transferred from one division to another of the High Court or from one judge to another of the Chancery Division by an order of the Lord Chancellor, provided that no transfer shall be made from or to any division without the consent of the President of the Division.

Three methods of transfer are provided for by the rules of this order and the sections set out below—

i. Where an action is commenced in the wrong division, the Court or a judge of the division in which it is commenced may either transfer the cause to the proper division or keep it where it is, s. 11 of the Act of 1875, *ante*, p. 133.

ii. The Lord Chancellor may transfer an action from one division to another, with the consent of the presidents of both divisions; and may, as hitherto, transfer an action from one judge of the Chancery Division to another; Rule 1.

iii. An action may be transferred at any stage, and either on the application of any party or without it, by a Court or Judge of the division in which it is pending, with the consent of the president of the division to which it is to be transferred. An example will be found in Appendix (C), No. 24, *post*, p. 371, of an application to transfer an action to the Chancery Division being made in the answer, the answer raising, by way of counter-claim, a claim for specific performance of an agreement for a lease; Rule 2.

By s. 11, of the Act of 1875:— "*Subject to any rules of Ct. de*"

Sub-s. 2. *If any plaintiff or petitioner shall at any time assign his cause or matter to any division of the said High Court to which, according to the rules of court or the provi-*

10.8

Re Hickey
Re Royal

ORDER LI.—TRANSFERS AND CONSOLIDATION.

18. When an order has been made by any Judge of the Chancery Division for the winding up of any company under the Companies Acts, 1862 and 1869, or for the administration of the assets of any testator or intestate, the Judge in whose Court such winding up or administration shall be pending shall have power, without any further consent, to order the transfer to such Judge of any action pending in any other division brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be.

Order L.I.,
Rule 2a.

sions of the principal Act or this Act, the same ought not to be assigned, the Court, or any judge of such division, upon being informed thereof, may on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the Court or any Judge thereof before any such transfer, shall be valid and effectual to all intents and purposes, in the same manner as if the same respectively had been taken and made in the proper division of the said Court to which such cause or matter ought to have been assigned.

Order LI.
Transfers
and Consoli-
dation.

By the Judicature Act, 1873 :—

S. 36. Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as rules of court may direct, from one division or Judge of the High Court of Justice to any other division or judge thereof, or may by the like authority be retained in the division in which the same was commenced, although such may not be the proper division to which the same cause or matter ought, in the first instance, to have been assigned.

2. Any action may, at any stage, be transferred from one division to another by an order made by the Court or any Judge of the Division to which the action is assigned : Provided that no such transfer shall be made without the consent of the President of the Division to which the action is proposed to be transferred.

3. Any action transferred to the Chancery Division or the Probate Division, shall, by the order directing the transfer, be directed to be assigned to one of the Judges of such Division to be named in the order.

4. Actions in any division or divisions may be consolidated by order of the Court or a Judge in the manner heretofore in use in the Superior Courts of Common Law

40. D. 869

The term, consolidation of actions, is used in two senses. First, a plaintiff brings two actions against the same defendant, for matters which might properly be combined in one action, and the

Order LI.
Transfers
and Consoli-
dation.

double proceeding is shown to be vexatious, the Court, in the exercise of its ordinary power to prevent any abuse of its own process, will consolidate the actions; that is to say, will stay proceedings absolutely in one action, and require the plaintiff to include the whole of his claims in the other; and this has been done with costs against the plaintiff. See *Cecil v. Brigges*, 2 T. R. 639; *Anon*, 1 Chitty's Rep. 709 (n.); *Beardsall v. Cheetham*, E. B. & E. 243; 1 Tidd's Practice, p. 614, 9th edit.; 2 Chitty's Archbold, p. 1347, 11th edit.

But the term consolidation is more frequently used in a different sense. Where actions are brought by the same plaintiff against different defendants, but the questions in dispute in all are substantially the same, the Court will, on the application of the defendants, stay proceedings in all the actions except one until that one action has been determined, upon the terms that the various defendants agree to be bound by the event of the action which proceeds. This practice was first introduced in the Queen's Bench under Lord Mansfield, in the case of actions against the several underwriters upon policies of insurance. (See 1 Tidd's Practice, p. 614, 9th edit.) But it has since been applied in many other cases; as in the case of separate guarantees by different instruments of separate parts of a debt; *Sharp v. Lethbridge*, 4 M. & G. 37; joint and several obligors of a bond conditioned for the good behaviour of another person, *Anderson v. Towgood*, 1 Q. B. 245; principal and sureties on a replevin bond, *Bartlett v. Bartlett*, 4 Scott, N. R. 779; the several members liable upon a mutual insurance policy, *Lewis v. Barks*, 4 C. B. N. S. 330. So where a number of actions against different defendants may be reduced to classes, those of each class raising the same questions, the Court may allow one action of each class to proceed, and stay the rest; *Syers v. Pickersgill*, 27 L. J. Ex. 5.

The order is made on the application of the defendant, and without the necessity of any consent on the plaintiff's part; *Hollingsworth v. Brodrick*, 4 A. & E. 646. It binds the defendants in the actions which are stayed to abide the event of the one which proceeds; but it does not bind the plaintiff to do so; and if the result of the first action is against him, he may proceed with another; *Doyle v. Anderson*, 1 A. & E. 635; *Doyle v. Douglas*, 4 B. & Ad. 544.

A consolidation order may be obtained at any time after service of the writ; *Hollingsworth v. Brodrick*, 4 A. & E. 646.

The Court may re-open the consolidation order and allow a second action to be defended, notwithstanding that the plaintiff has succeeded in the first action. But it will require a very strong case to induce it to do so. Probably a case must be shown at least as strong as would be required to procure a new trial. See *Foster v. Alvez*, 3 Bing. N. C. 896.

The whole of the cases upon the consolidation of actions, many of which are difficult to reconcile, will be found collected in 2 Chitty's Archbold, pp. 1347-8, 11th edit.; 2 Lush's Practice, p. 962, 3rd edit., by Dixon.

The form of order in general use will be found in Chitty's Forms, p. 788, 9th edit.

ORDER LII.

Order LII.
Interlocu-
tory Orders.

INTERLOCUTORY ORDERS AS TO MANDAMUS INJUNCTIONS OR INTERIM PRESERVATION OF PROPERTY, &c.

1. When by any contract a prima facie case of liability

is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

Order LII.
Interlocutory Orders.

A. B. Rule 5

The several rules of this Order and the sections cited below give very important powers to the Court for preserving the rights of the parties uninjured during the pendency of litigation.

i. By Rule 1, when a prima facie case of liability, *under a contract*, is established, and the party prima facie liable seeks to be relieved from his liability, an Order may be made for payment into Court of, or otherwise securing, the amount of the claim, or for the preservation of the subject-matter. The meaning of the word "established" seems to be (Rule 5, *post*),—admitted on the pleadings, if there are pleadings, or shown to the satisfaction of the Court or judge if there are no pleadings. As to enforcing such Orders as those referred to, see Order XLII., Rules 2, 5, and 20.

ii. By Rule 2, an Order may be made for the sale of goods which are perishable, or which for other reasons it is desirable to have sold at once.

iii. In any case (not, as under Rule 1, in the case of liability under a contract only) an Order may be made for the preservation of the subject-matter of the action, or for inspection of property, or the taking of samples, or making observations or experiments; Rule 3.

iv. A mandamus or an injunction may be granted, or a receiver appointed if it be just or convenient; s. 25, sub-s. 8 of the Act of 1873, and Rule 4, *post*.

v. Where property other than lands is claimed, and the defence to the claim is founded upon an alleged lien, an Order may be made for delivering up the property to the claimant on payment into Court of the amount of the alleged lien, with a sum for interest and costs, if the Court or judge think fit.

2. It shall be lawful for the Court or a Judge, on the application of any party to any action, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as to the Court or Judge may seem desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

The power given by this Rule is new. Compare s. 13 of the C. L. P. Act 1860.

3. It shall be lawful for the Court or a Judge, upon the application of any party to an action, and upon such terms as may seem just, to make any order for the detention, preservation, or inspection of any property, being the subject of such action, and for all or any of the

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Order LII.
Interlocu-
tory Orders.
—

purposes aforesaid to authorise any person or persons to enter upon or into any land or building in the possession of any party to such action, and for all or any of the purposes aforesaid to authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

The powers given by this Rule are very much wider than the mere power to allow inspection given by s. 58 of the C. L. P. Act, 1854.

104.D. 600
4. An application for an order under section 25, sub-section 8, of the Act, or under Rules 2 or 3 of this Order, may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the said sub-section 8 it may be made either *ex parte* or with notice, and if for an order under the said Rules 2 or 3 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

By s. 25 of the Judicature Act, 1873 :—

Sub-s. 8. *A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.*

As to the effect of this sub-section, see notes thereto, *ante*, p. 64.

5. An application for an order under Rule 1 may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a Judge.

6. Where an action is brought to recover, or a defendant in his statement of defence seeks by way of counter claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or Judge may direct, and that upon such payment into Court being made, the property claimed be given up to the party claiming it.

Order LII.
Interlocutory Orders.
—

The power given by this Rule is new.

ORDER LIII.

MOTIONS AND OTHER APPLICATIONS.

Order LIII.
Motions and other Applications.
—

1. Where by these Rules any application is authorised to be made to the Court or a Judge in an action, such application, if made to a divisional Court or to a Judge in Court, shall be made by motion.

Applications to a Judge at Chambers must, under the next Order, be made by summons.

2. No Rule or Order to show cause shall be granted in any action, except in the cases in which an application for such Rule or Order is expressly authorised by these Rules.

The ordinary practice in the Common Law Courts, except in the few cases in which a rule was made absolute *ex parte*, and except where the parties chose to show cause in the first instance, that is on the original motion, has been to move for and obtain a rule to show cause; and upon cause being shown, the rule was discharged or made absolute. The contrary will now be the general rule. And, notice having been given, the matter will be disposed of upon the original motion.

A motion for a new trial (Order XXXIX., *ante*, p. 267) and a motion to enter judgment after the trial where no leave has been reserved (Order XL., Rules 4, 5, 6, *ante*, p. 270) must still be for a rule to show cause.

Order LIII
Motions and
other Appli-
cations.

3. Except where by the practice existing at the time of the passing of the said Act any order or rule has heretofore been made *ex parte* absolute in the first instance, and except where by these Rules it is otherwise provided, and except where the motion is for a rule to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Judge may think just; and any party affected by such order may move to set it aside.

An application for a mandamus or injunction or the appointment of a receiver under s. 25, sub-s. 8 of the Judicature Act, 1873, *ante*, p. 64, or for the sale or protection of property under Order LII., Rules 2 and 3, may be made *ex parte*; Order LII., Rule 4.

4. Unless the Court or Judge give special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion.

5. If on the hearing of a motion or other application the Court or Judge shall be of opinion that any person to whom notice has not been given ought to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given upon such terms, if any, as the Court or Judge may think fit to impose.

6. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit.

7. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice, or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear in the action, has not appeared within the time limited for that purpose.

8. The plaintiff may, by leave of the Court or a Judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant.

ORDER LIV.

4. The exception contained in Rule 2 of Order LIV. is hereby repealed so far as regards the proceedings hereinafter mentioned before the Masters of the Queen's Bench, Common Pleas, and Exchequer Divisions, and such Masters may exercise all such authority and jurisdiction as may be exercised by a Judge at Chambers in respect of :

Discovery, whether of documents or otherwise, and inspection, except inspection under Order LII., Rule 3 ;

Orders *nisi* for charging stock funds, annuities, or share of dividends, or annual proceeds thereof ;

Interpleader, except where all parties concerned consent to a final determination of the question in dispute without a Jury or Special Case, and except where the sum in dispute is less than 50*l.*, and one of the parties desires such a determination. In such cases the question shall be determined by the Judge, unless the parties agree to refer it to the Master.

CAIRNS, C.

G. JESSEL, M.R.

FITZROY KELLY, L.C.B.

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RULES.

1. These Rules may be cited as "The Rules of Supreme Court, November, 1878," or each separate Rule may be cited as if it had been one of the Rules of Supreme Court, and had been numbered by the number of the Order and Rule mentioned in the margin.

2. These Rules shall come into operation on the 1st November, 1878.

ORDER LIV.

Order LIV.
Applications
at Chambers

APPLICATIONS AT CHAMBERS.

1. Every application at chambers authorised by these Rules shall be made in a summary way by summons.

2. In the Queen's Bench, Common Pleas, and Exchequer Divisions a master, and in the Probate, Divorce, and Admiralty Division a registrar, may transact all such business and exercise all such authority and jurisdiction in respect of the same as under the Act, or the Schedule thereto, or these Rules, may be transacted or exercised by a Judge at chambers, except in respect of the following proceedings and matters; that is to say,—

All matters relating to criminal proceedings or to the liberty of the subject :

The removal of actions from one division or Judge to another division or Judge :

The settlement of issues, except by consent :

Discovery, whether of documents or otherwise, and inspection, except by consent :

Appeals from district registrars :

Interpleader other than such matters arising in interpleader as relate to practice only, except by consent :

Prohibitions :

Injunctions and other orders under sub-section 8 of section 25 of the Act, or under Order LIII., Rules 1, 2, and 3 respectively :

Awarding of costs, other than the costs of any proceeding before such master :

Reviewing taxation of costs :

Charging orders on stock funds, annuities, or share of dividends or annual produce thereof :

Acknowledgments of married women.

ORDER LIV.—APPLICATIONS AT CHAMBERS.

19. The authority and jurisdiction of the District Registrar or of a Master of the Queen's Bench, Common Pleas, or Exchequer Divisions shall not extend to granting leave for service out of the jurisdiction of a writ of summons or of notice of a writ of summons.

Order LIV.,
Rule 2a.

the masters were empowered to exercise all the jurisdiction of a judge at chambers, except (unless by consent) in a specified list of matters. The matters so excepted correspond, except in a few points, with that given in the above rule.

The differences are these. The old list of exceptions included the following matters not mentioned in the new :—

The removal of causes from inferior Courts ;

Order LIV.
Applications
at Chambers

The referring of causes under the C. L. P. Act. 1854 ;
The rectifying of omissions or mistakes in the register under the
Joint Stock Companies Acts ;
Staying proceedings after verdicts ;
Leave to sue *in forma pauperis*.
The new list of exceptions contains the following matters not
in the old :—

The removal of actions from division to division, or judge to judge ;
The settlement of issues ;
Appeals from district registrars ;
Orders for the protection of property, analogous to injunctions.

Under the old rules all the excepted matters were subject to the
general qualifications, *except by consent*. Jurisdiction by consent is
only provided for under the new rule with respect to the settlement
of issues, discovery, and interpleader.

The following rules of this order continue the existing practice
unchanged.

Similar powers to those here given to the masters are given to
district registrars by Order XXXV., Rule 5, *ante*, p. 245.

No costs of counsel's attendance at Chambers can be allowed with-
out a certificate that the case is fit for counsel ; Additional Rules,
post, p. 413.

As to costs thrown away by default of attendance at Chambers,
or by any party not being ready, and as to the costs of attendance in
special instances ; see *Ibid*.

3. If any matter appears to the master proper for the
decision of a Judge the master may refer the same to a
Judge, and the Judge may either dispose of the matter or
refer the same back to the master with such directions as
he may think fit.

4. Any person affected by any order or decision of a
master may appeal therefrom to a Judge at chambers.
Such appeal shall be by summons, within four days after
the decision complained of, or such further time as may be
allowed by a Judge or master.

5. An appeal from a master's decision shall be no stay
of proceedings unless so ordered by a Judge or master.

6. In the Queen's Bench, Common Pleas, and Ex-
chequer Division every appeal to the Court from any
decision at chambers shall be by motion, and shall be made
within eight days after the decision appealed against.

Order LV.
Costs.

ORDER LV.

COSTS.

Subject to the provisions of the Act, the costs of and
incident to all proceedings in the High Court shall be in

Sec. 18-6

7. In any cause, or matter, in which security for costs Or
is required, the security shall be of such amount, and be
given at such time or times, and in such manner and form
as the Court or a Judge shall direct. *3 Ch. D. 62*

the discretion of the Court; but nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity: Provided that where any action or issue is tried by a jury, the costs shall follow the event, unless upon application made at the trial for good cause shown the Judge before whom such action or issue is tried or the Court shall otherwise order.

Order LV.
Costs.

of appeal
1 Cl. D. 41

2 Cl. D. 171

Under the various statutes affecting costs, the rule in the Common Law Courts has been that costs follow the event. In Chancery, except in the case, referred to in the rule, of a trustee or mortgagee, they have been in the discretion of the Court. But the rule acted upon has been that the party failing pays the costs in the absence of special circumstances.

This rule must be read subject to the provisions of the County Courts Act, 1867, depriving a plaintiff of costs who recovers not more than 20*l.* in an action founded on contract, or 10*l.* in one of tort, without a certificate or order (see s. 67 of the Judicature Act, 1873, *ante*, p. 91 and note thereto), as well as to Lord Denman's Act, 3 & 4 Vict., c. 24, s. 2, depriving a plaintiff of costs who recovers less than 40*s.* in an action of tort unless the judge certifies that the tort was wilful and malicious, or the action brought to try a right; and the 21 Jac. 1, c. 16, s. 6, whereby a plaintiff recovering less than forty shillings in slanders can have no more costs than damages.

For scales of costs, the discretion of the taxing officer, the mode of taxing and reviewing the taxation of costs and other matters relating to costs, see Additional Rules, *post*, p. 394.

ORDER LVI.

NOTICES AND PAPER, &c.

Order LVI.
Notices and
Paper, &c.

1. All notices required by these Rules shall be in writing, unless expressly authorised by a Court or Judge to be given orally.

2. Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three quarters of an inch wide, and an outer margin about two inches and a half wide.

For regulations as to printing, delivery of copies, costs, &c., see Additional Rules, Order V., *post*, p. 392.

4. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

See Additional Rules, Order V., *post*, p. 392.

Order LVII.
Time.

ORDER LVII.

TIME.

1. Where by these Rules, or by any judgment or order given or made after the commencement of the Act, time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time shall be computed by calendar months.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time. *4 Cl. D. 794*

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

4. No pleadings shall be amended or delivered in the long vacation, unless directed by a Court or a Judge.

Hitherto in the Common Law Courts no pleadings could be delivered during the long vacation. It may now be done if an order for the purpose be obtained.

5. The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these Rules for filing, amending, or delivering any pleading, unless otherwise directed by a Court or a Judge.

2013 D. 171
6. A Court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

By Additional Rules, *post*, p. 414, the costs of one application for extension of time are (subject to any special order) to be allowed as costs in the cause. But, unless specially ordered, no costs of any further application can be allowed to the parties making it.

ORDER LVIII.

Order
LVIII.
Appeals.
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APPEALS.

1. Bills of exceptions and proceedings in error shall be abolished.

There have hitherto been several modes, according to the practice of the Common Courts, of reaching the Exchequer Chamber. One has been by Bill of Exceptions, excepting to the direction in point of law of the judge at the trial. A second has been by proceedings in error, where the miscarriage complained of appeared upon the face of the recorded proceeding. A third has been by appeal from judgments refusing, discharging, or making absolute rules for new trials, or to enter verdicts under the C. L. P. Act, 1852, ss. 34 to 44. Such appeals have been upon cases stated for the purpose. Bills of Exceptions and proceedings in Error are abolished by this rule, and cases on appeal by the next rule, one uniform method of appeal by way of rehearing upon motion being adopted from all the divisions. But though bills of exceptions are in form abolished, the right to go direct from the judge at the trial to the Court of Appeal in many of the same cases, and for the same purposes as hitherto by Bill of exceptions, is preserved. See s. 22 of the Act of 1875, *ante*, p. 138, and note to s. 46 of the Act of 1873, *ante*, p. 82.

Appeals to the Court of Appeal in Chancery have been by petition for rehearing, or where the order appealed from was made on motion, by appeal motion.

2. All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

s.c. 2. 882

By the Judicature Act, 1873:—

S. 19. *The said Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of Her Majesty's High Court of Justice, or of any judges or judge thereof, subject to the provisions of this Act, and to such rules and orders of Court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this Act.*

S. 49. *No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court or judge making such order.*

Order
LVIII
Appeals
—

S. 50. *Every order made by a Judge of the said High Court in Chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any Divisional Court, or by the judge sitting in Court, according to the course and practice of the division of the High Court to which the particular cause or matter in which such order is made may be assigned: and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the judge by whom such order was made, or of the Court of Appeal.*

By the Act of 1875:—

S. 12. *Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three judges of the said court sitting together, and shall, when the subject matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two judges of the said Court sitting together.*

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

By the Judicature Act, 1873:—

S. 52. *In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single Judge of the Court of Appeal; and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal or a Divisional Court thereof.*

S. 28. *Provision shall be made by Rules of Court for the hearing, in London or Middlesex, during vacation by Judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.*

By the Act of 1875:—

S. 4. *No Judge of the said Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made by himself, or made by any Divisional Court of the High Court of which he was and is a member.*

By s. 45 judgments on appeal from inferior Courts are to be final unless leave to appeal be given. By s. 47 judgments of the Court of

Criminal Appeal are without appeal. By s. 50 an appeal does not lie direct to the Court of Appeal from a Judge at Chambers unless leave so to appeal be given. Order
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The provisions of the order, and of the sections set out below introduce changes of the most important character, especially in the procedure of the Queen's Bench, Common Pleas, and Exchequer Divisions.

Hitherto there has been no mode of reviewing the decision of a Common Law Court except, first, by proceedings in error for defects apparent on the face of the record; or, secondly, in certain cases under the C. L. P. Act, 1852, against a judgment, refusing, discharging, or making absolute a rule for a new trial, or to enter a verdict. From the vast number of judgments and rules not falling under either of these heads there has been no appeal. For the future an appeal will lie from any judgment or order, except those specified below (s. 19 of the Act of 1873). And this section is not limited to judgments and orders in any action, but is general in its terms; it includes, too, interlocutory orders, as well as final judgments.

Every appeal will be a rehearing upon motion, after notice; Rule 2. The Court of Appeal will have full power over the whole subject matter, with power to give any judgment that ought to be given, and with all the powers of the Court of first instance; Rule 5. Fresh evidence may be used in the cases provided for in the same rule. No cross appeal will be necessary; but the respondent has only to give notice under Rule 6 if he has to complain of anything in the decision appealed against, and even the omission of the notice will not be fatal; Rule 6.

An appeal from a final judgment must be heard before three judges; one from an interlocutory order may be heard before two; s. 12, of the Act of 1875.

The time within which an appeal must be brought is, by Rule 15, twenty-one days from an interlocutory order, and a year from a final judgment, unless the time be enlarged by the Court of Appeal. And the notice of appeal must in the case of a judgment, final or interlocutory, be a fourteen days' notice, and in the case of an interlocutory order a four days' notice; Rule 4.

It will be observed that an appellant need not give security for costs unless ordered to do so by the Court of Appeal; Rule 15.

Incidental orders may, by s. 52 of the Act of 1873, *supra*, be made by a single Judge of the Court of Appeal.

It will be observed that s. 28 of the Act of 1873, cited above, directs that provision shall be made by Rule of Court for the hearing of matters of urgency during vacation, by Judges of the Court of Appeal, as well as by Judges of the High Court. But though the rules do provide (Order LXI., *post*, p. 308), for the attendance of vacation Judges of the High Court; there is no such provision with regard to Judges of the Court of Appeal.

3. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as

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may seem just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as to the Court of Appeal may seem fit.

4. Notice of appeal from any judgment, whether final or interlocutory, shall be a fourteen days' notice, and notice of appeal from any interlocutory order shall be a four days' notice.

5. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may seem just.

As to amendments. See Order XVI., Rule 13, *ante*, p. 197; Order XXVII., *ante*, p. 223. As to the mode of bringing before the Court of Appeal the evidence taken in the Courts below, see Rule 11, *post*, p. 303. And as to printing evidence, Rule 12, *post*, p. 303. As to security for costs upon appeal, see Rule 15, *post*, p. 303.

6. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall, within the time specified in the

1 Q.D. 562

6 Q.D. 140

4 Q.D. 749

next Rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

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It will be observed that the language of this rule, dispensing with the necessity for notice of motion by way of cross appeal, is perfectly general; it is not limited to the case in which a respondent seeks to have the decision of the Court below varied as against the party appellants alone. But if the matter of his complaint affects a third party, as, for instance, a co-respondent, the rule requires him to give notice to the party so affected. And an omission to give such notice would of course be ground for the Court exercising the power given to it in the last clause of the rule.

7. Subject to any special order which may be made, notice by a respondent under the last preceding rule shall in the case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order a two days' notice.

8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a Judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

Does not apply
to refusal of order
3 Ch. D. 80

Must be at 10 min
of day named in
notice of appeal
3 Ch. D. 305

9. The time for appealing from any order or decision made or given in the matter of the winding up of a company under the provisions of the Companies Act, 1862, or any Act amending the same, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under Rule 15.

4 Ch. D. 305

4 Ch. D. 785
787, 794

The time for appealing from an interlocutory order is three weeks; Rule 15, *post*. This is the same time prescribed for notice of appeal from an order in Winding up by s. 124 of the Companies Act, 1862. The same period is fixed in bankruptcy by Rule 143 of the Bankruptcy Rules, 1870.

10. Where an *ex parte* application has been refused by the Court below, an application for a similar purpose may

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be made to the Court of Appeal ex parte within four days from the date of such refusal, or within such enlarged time as a Judge of the Court below or of the Appeal Court may allow.

11. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal as follows :

(a.) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed.

(b.) As to any evidence given orally, by the production of a copy of the Judge's notes, or such other materials as the Court may deem expedient.

As to receiving fresh evidence, see Rule 5, *ante*, p. 304.

4Ch 224
12. Where evidence has not been printed in the Court below, the Court below or a Judge thereof, or the Court of Appeal or a Judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a Judge thereof shall otherwise order.

Evidence taken by affidavit under a consent must be printed; Order XXXVIII., Rule 6, p. 226. As to the mode of printing, delivery of copies, costs, &c., see Order LVI., Rule 2; Additional Rules, Order V., *post*, p. 392.

13. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the Judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

14. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may seem just.

4Ch. 2. 139
15. No appeal from any interlocutory order shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated from the time at which the judgment or order is signed,

366 ?
4Ch. 2. 787; 5Ch. 2. 589 ?
* i.e. notice of appeal must be served within 21 days 5Ch. 2. 365

entered, or otherwise perfected, or, in the case of the refusal Order LVIII. Appeals.
⁵⁰ ₁₂ of an application, from the date of such refusal. Such
 deposit or other security for the costs to be occasioned by
 any appeal shall be made or given as may be directed under
 special circumstances by the Court of Appeal. *2 Cl. D. 67 4 Cl. D. 784*
5 Cl. D. 633

It will be observed that these rules contain no provision for any deposit or security for costs or otherwise by an appellant, except the power given by this rule to the Court of Appeal to order security for costs *under special circumstances.*

16. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except *2 Cl. D. 492*
 so far as the Court appealed from, or any Judge thereof, or the Court of Appeal, may so order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

17. Wherever under these Rules an application may be made either to the Court below or to the Court of Appeal, or to a Judge of the Court below or of the Court of Appeal, it shall be made in the first instance to the Court or Judge below.

18. Every application to a Judge of the Court of Appeal shall be by motion, and the provisions of Order 53 shall apply thereto.

ORDER LIX.

EFFECT OF NON-COMPLIANCE.

Order LIX.
 Effect of
 Non-com-
 pliance.

Non-compliance with any of these Rules shall not render the proceedings in any action void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit. *3 Cl. D. 106*

ORDER LX.

OFFICERS.

Order LX.
 Officers.

1. All officers who, at the time of the commencement of the said Act shall be attached to the Court of Chancery shall be attached to the Chancery Division of

Order LX.
Officers.

the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Queen's Bench shall be attached to the Queen's Bench Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Common Pleas, shall be attached to the Common Pleas Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Exchequer, shall be attached to the Exchequer Division of the said High Court; and all officers who at the time of the commencement of the said Act shall be attached to the Court of Probate, the Court of Divorce, and the Court of Admiralty respectively shall be attached to the Probate, Divorce, and Admiralty Division of the said High Court.

2. Officers attached to any division shall follow the appeals from the same division, and shall perform in the Court of Appeal analogous duties in reference to such appeals as the registrars and officers of the Court of Chancery usually performed as to rehearings in the Court of Appeal in Chancery, and as the Masters and officers of the Court of Queen's Bench, Common Pleas, and Exchequer respectively performed as to appeals heard by the Court of Exchequer Chamber.

See also as to officers, Part V. of the Judicature Act, 1873, *ante*, pp. 101, *et seq*; and the definition of "proper officer" in Order LXII., *post*, p. 312.

Order LXI.
Sittings and
Vacations.

ORDER LXI.

SITTINGS AND VACATIONS

1. The sittings of the Court of Appeal and the sittings in London and Middlesex of the High Court of Justice shall be four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings.

The Michaelmas sittings shall commence on the 2nd of November and terminate on the 21st of December; the Hilary sittings shall commence on the 11th of January and terminate on the Wednesday before Easter; the Easter sittings shall commence on the Tuesday after Easter week and terminate on the Friday before Whitsunday.

The Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on the 8th of August.

By the Judicature Act, 1873 :—

S. 20. *The division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any Commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to rules of Court, the High Court of justice and the Court of Appeal, and the judges thereof respectively, or any such Commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such Courts respectively, or of such judges or commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.*

Order LXI.
Sittings and
Vacations.

S 29. *Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any Judge or Judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act; and any Commissioner or Commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the said High Court of Justice; and, subject to any restrictions or conditions imposed by Rules of Court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the judge or judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a Commissioner or Commissioners as aforesaid, or at sittings to be held in Middlesex or*

Order LXI.
Sittings and
Vacations.
—

London as hereinafter in this Act mentioned, and such question or issue shall be tried and determined accordingly.

A cause or matter not involving any question or issue of fact, may be tried and determined in like manner with the consent of all the parties thereto.

S. 30. *Subject to Rules of Court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Middlesex and London, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many judges as the business to be disposed of may render necessary. Any judge of the High Court of Justice sitting for the trial of causes and issues in Middlesex or London, at any place heretofore accustomed, or to be hereafter determined by Rules of Court, shall be deemed to constitute a Court of the said High Court of Justice.*

2. The vacations to be observed in the several courts and offices of the Supreme Court shall be four in every year, viz., the Long vacation, the Christmas vacation, the Easter vacation, and the Whitsun vacation.

The Long vacation shall commence on the 10th of August and terminate on the 24th of October. The Christmas vacation shall commence on the 24th of December and terminate on the 6th of January.

The Easter vacation shall commence on Good Friday and terminate on Easter Tuesday; and the Whitsun vacation shall commence on the Saturday before Whitsunday and shall terminate on the Tuesday after Whitsunday.

By the Judicature Act, 1873 :—

S. 20. *Her Majesty in Council may from time to time, upon any report or recommendation of the judges by whose advice Her Majesty is hereinafter authorised to make rules before the commencement of this Act, and after the commencement of this Act upon any report or recommendation of the Council of Judges of the Supreme Court hereinafter mentioned, with the consent of the Lord Chancellor, make, revoke, or modify, orders regulating the vacations to be observed by the High Court of Justice and the High Court of Appeal, and in the offices of the said Courts respectively; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this Act; and Rules of Court*

may be made for carrying the same into effect in the same manner as if such Order in Council were part of this Act. In the meantime, and subject thereto, the said vacations shall be fixed in the same manner, and by the same authority, as if this Act had not passed. This section shall come into operation immediately upon the passing of this Act.

Order LXI.
Sittings and
Vacations.
—

3. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

4. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving.

5. Two of the Judges of the High Court shall be selected in the commencement of each long vacation for the hearing at London or Middlesex during vacation of all such application as may require to be immediately or promptly heard. Such two Judges shall act as vacation Judges for one year from their appointment. In the absence of arrangement between the Judges, the two vacation Judges shall be the two Judges last appointed (whether as Judges of the said High Court or of any Court whose jurisdiction is by the said Act transferred to the said High Court) who have not already served as vacation Judges of any such Court, and if there shall not be two Judges for the time being of the said High Court who shall not have so served, then the two vacation Judges shall be the Judge (if any) who has not so served and the senior Judge or Judges who has or have so served once only according to seniority of appointment, whether in the said High Court or such other Court as aforesaid. The Lord Chancellor shall not be liable to serve as a vacation Judge. 10 Ch. 541

By the Judicature Act, 1873 :—

S. 28. *Provision shall be made by rules of Court for the hearing, in London or Middlesex, during vacation by Judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.*

No provision, it will be observed, is made for the attendance of Vacation Judges of the Court of Appeal.

Order LXI.
Sittings and
Vacations.
—

6. The vacation Judges may sit either separately or together as a Divisional Court as occasion shall require, and may hear and dispose of all actions, matters, and other business to whichever division the same may be assigned. No order made by a vacation Judge shall be reversed or varied except by a Divisional Court or the Court of Appeal, or a Judge thereof, or the Judge who made the order. Any other Judge of the High Court may sit in vacation for any vacation Judge.

9. The vacation Judges of the High Court, may dispose of all actions, matters, and other business of an urgent nature during any interval between the sittings of any division of the High Court to which such business may be assigned, although such interval may not be called or known as a vacation.

Order LXII.
Exceptions
from the
Rules.
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ORDER LXII.

EXCEPTIONS FROM THE RULES.

Nothing in these Rules shall affect the practice or procedure in any of the following causes or matters:—

Criminal proceedings :

Proceedings on the Crown side of the Queen's Bench Division :

Proceedings on the Revenue side of the Exchequer Division :

Proceedings for divorce or other matrimonial causes.

See s. 21 of the Act of 1875, *ante*, p. 138 ; and note to title of this schedule, *ante*, p. 151.

Order
LXIII.
Interpreta-
tion of terms
—

ORDER LXIII.

INTERPRETATION OF TERMS.

The provisions of the 100th section of the Act shall apply to these Rules.

In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the severals words hereinafter mentioned or referred to shall have or include the meanings following:—

“ Person ” shall include a body corporate or politic :

“ Probate actions ” shall include actions and other matters relating to the grant or recall of probate or of letters of administration other than common form business : Order
LXIII.
Interpreta-
tion of terms
—

“ Proper officer ” shall, unless and until any rule to the contrary is made, mean an officer to be ascertained as follows :—

- (a). Where any duty to be discharged under the Act or these Rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same :
- (b). Where any new duty is under the Act or these Rules to be discharged, the proper officer to discharge the same shall be such officer, having previously discharged analogous duties, as may from time to time be directed to discharge the same, in the case of an officer of the Supreme Court, or the High Court of Justice, or the Court of Appeal, not attached to any division, by the Lord Chancellor, and in the case of an officer attached to any division, by the President of the division, and in the case of an officer attached to any Judge, by such Judge :

“ The Act ” and “ the said Act ” shall respectively mean the Supreme Court of Judicature Act, 1873, as amended by this Act.

See s. 100 of the Judicature Act, 1873, *ante*, p. 113.

As to officers, see ss. 77 to 84 of the Judicature Act, 1873, *ante*, pp. 101-108 ; and Order LX., *ante*, pp. 101, 107.

APPENDIX (A).

PART I.

FORMS OF WRITS OF SUMMONS, &c.

Part I.
Forms of
Writs.

No. 1.

187 . [*Here put the letter and number.*] A.D. 1875.
In the High Court of Justice. Between A. B. Plaintiff, Title in full.
Division. and
C. D. and E. F. Defendants,

VICTORIA, by the grace of God, &c.

To C. D., of in the county of and E. F., of

We command you, That within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Division of Our High Court of Justice in an action at the suit of A. B. ; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within (*twelve*) calendar months from the date thereof, or, if renewed, from the date of such renewal, including the day of such date, and not afterwards.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the [] office at .

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, &c.

This writ was issued by E. F., of solicitor for the said plaintiff, who resides at , or, this writ was issued by the plaintiff in person who resides at [*mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any.*]

Indorsement to be made on the writ after service thereof.

This writ was served by X. Y. on L. M. [*the defendant or one of the defendants*], on Monday, the day of , 18 .
(Signed) X. Y.

No. 2.

Writ for service out of the jurisdiction, or where notice in lieu of service is to be given out of the jurisdiction.

187 . [*Here put the letter and number.*]
In the High Court of Justice. Between A. B. Plaintiff,
Division. and
C. D. and E. F. Defendants.

VICTORIA, by the grace of God, &c.

To C. D., of

We command you, C. D., That within [*here insert the number of days directed by the Court or a Judge ordering the service or notice*]

Part I.
Forms of
Writs.

after the service of this writ [or notice of this writ, as the case may be] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the _____ division of Our High Court of Justice in an action at the suit of *A. B.*; and take notice, that in default of your so doing the plaintiff may [by leave of the Court or a Judge] proceed therein, and judgment may be given in your absence. Witness, &c.

Memorandum and Indorsements as in Form No. 1.

Indorsement to be made on the writ before the issue thereof.

N.B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction.

No. 3.

Notice of Writ in lieu of service to be given out of the jurisdiction.

187 . [Here put the letter and number.]

Between *A. B.* Plaintiff,
and

C. D., E. F., and G. H., Defendants.

To *G. H.,* of

Take notice that *A. B.,* of _____ has commenced an action against you, *G. H.,* in the _____ division of Her Majesty's High Court of Justice in England, by writ of that Court, dated the _____ day of _____, A.D. 18____; which writ is indorsed as follows [copy in full the indorsements], and you are required within _____ days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action; and in default of your so doing, the said *A. B.* may [by leave of the Court or a Judge] proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the [_____] office at

(Signed) _____ *A. B.,* of _____ *dc.*

_____ or
_____ *N. Y.,* of _____ *dc.*

In the High Court of Justice.

Solicitor for *A. B.*

Division.

No. 4.

Writ in Admiralty action in rem.

187 . [Here put the letter and number.]

In the High Court of Justice.

Admiralty Division.

Between *A. B.,* plaintiff,

and

Owners.

Victoria, &c.

To the owners and parties interested in the ship or vessel [*Mary*] [or cargo, &c., as the case may be] of the port of _____

We hereby authorize _____ officer of Our Supreme Court, and all and singular his substitutes, to arrest the ship or vessel [*Mary*], of the port of _____ and the cargo laden therein [or cargo, &c., as the case may be], and to keep the same under safe arrest until he shall receive further orders from Us. And We command you, the owners and other parties interested in the said ship and cargo [or cargo, &c., as the case may be] that within eight

days after the arrest of the said vessel [*or cargo, &c., as the case may be*] you do cause an appearance to be entered for you in the Admiralty Division of our High Court of Justice in an action at the suit of *A. B.*; and take notice that in default of your so doing Our said Court will proceed to hear the said action and to pronounce judgment therein, your absence notwithstanding.

Part I.
Forms of
Writs.

No. 5.

Form of Memorandum for Renewed Writ.

In the High Court of Justice.
Division.

Between *A. B.*, plaintiff,
and
C. D., defendant.

Seal renewed writ of summons in this action indorsed as follows:—
[*Copy original writ and the indorsements.*]

No. 6.

Memorandum of Appearance.

187 . [*Here put the letter and number.*]

High Court of Justice.
[*Chancery*] Division.

A. B. v. C. D., and others.

Enter an appearance for
in this action.

Dated this day of

X. Y.,
Solicitor for the Defendant.

The place of business of *X. Y.* is
His address for service is

or [*C. D.*,
Defendant in person.

The address of *C. D.* is
His address for service is

The said defendant [*requires, or, does not require*] a statement of complaint to be filed and delivered.

No. 7.

[*Here put the letter and number.*]

In the High Court of Justice.

Queen's Bench (or *Chancery, C. P., or, &c.*) Division.

Between *A. B.*, plaintiff,
and
C. D., and
E. F., defendants.

The defendant *C. D.* limits his defence to part only of the property mentioned in the writ in this action, that is to say, to the close called "the Big field."

Yours, &c.,

G. H.,

Solicitor for the said defendant *C. D.*

To Mr. *X. Y.*, plaintiff's solicitor.

PART II.

SECTION I.

GENERAL INDORSEMENTS.

In Matters assigned by the 34th Section of the Act to the Chancery Division.

1. *Creditor to administer Estate.*

100 D. 691
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516. 640

The plaintiff's claim is as a creditor of X. Y., of deceased, to have the [real and] personal estate of the said X. Y. administered. The defendant C. D. is sued as the administrator of the said X. Y. [and the defendants E. F. and G. H. as his co-heirs-at-law].

2. *Legatee to administer Estate.*

The plaintiff's claim is as a legatee under the will dated the day of 18 , of X. Y. deceased, to have the [real and] personal estate of the said X. Y. administered. The defendant C. D. is sued as the executor of the said X. Y. [and the defendants E. F. and G. H. as his devisees].

3. *Partnership.*

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the day of], and to have the affairs of the partnership wound up.

4. *By Mortgagee.*

The Plaintiff's claim is to have an account taken of what is due to him for principal, interest, and costs on a mortgage dated the day of made between [or by deposit of title deeds], and that the mortgage may be enforced by foreclosure or sale.

5. *By Mortgagor.*

The plaintiff's claim is to have an account taken of what, if any thing, is due on a mortgage dated and made between [parties], and to redeem the property comprised therein.

6. *Raising Portions.*

The plaintiff's claim is that the sum of £, which by an indenture of settlement dated , was provided for the portions of the younger children of may be raised.

7. *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture dated and made between , carried into execution.

8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed dated and made between [parties], set aside or rectified.

9. *Specific Performance.*Part II.
Indorse-
ments.

The plaintiff's claim is for specific performance of an agreement dated the _____ day of _____, for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at _____.

SECTION II.

<i>Money Claims where no Special Indorsement under Order III., Rule 6.</i>		
The plaintiff's claim is _____	l. for the price of goods sold.	Goods sold.
[<i>This Form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.</i>]		
The plaintiff's claim is _____	l. for money lent [<i>and interest</i>].	Money lent.
The plaintiff's claim is _____	l. whereof _____ l. is for the price	Several
of goods sold, and _____	l. for money lent, and _____ l. for	demands.
interest.		
The plaintiff's claim is _____	l. for arrears of rent.	Rent.
The plaintiff's claim is _____	l. for arrears of salary as a clerk	Salary, &c.
[<i>or as the case may be.</i>]		
The plaintiff's claim is _____	l. for interest upon money lent.	Interest.
The plaintiff's claim is _____	l. for a general average contri-	General
bution.		average.
The plaintiff's claim is _____	l. for freight and demurrage.	Freight, &c.
The plaintiff's claim is _____	l. for lighterage.	
The plaintiff's claim is _____	l. for market tolls and stallage.	Tolls.
The plaintiff's claim is _____	l. for penalties under the Statute	Penalties.
[. . . .]		
The plaintiff's claim is _____	l. for money deposited with the	Bankers bal-
defendant as a banker.		ance.
The plaintiff's claim is _____	l. for fees for work done [<i>and</i>	Fees, &c., as
l. money expended] as a solicitor.		solicitors.
The plaintiff's claim is _____	l. for commission earned as [<i>state</i>	Commission.
character as auctioneer, cotton broker, &c.].		
The plaintiff's claim is _____	l. for medical attendances.	Medical at-
		tendance, &c.
The plaintiff's claim is _____	l. for a return of premiums paid	Return of
upon policies of insurance.		premium.
The plaintiff's claim is _____	l. for the warehousing of goods.	Warehouse
		rent.
The plaintiff's claim is _____	l. for the carriage of goods by	Carriage of
railway.		goods.
The plaintiff's claim is _____	l. for the use and occupation of a	Use and
house.		occupation
		of houses.
The plaintiff's claim is _____	l. for the hire of [<i>furniture</i>].	Hire of
		goods.
The plaintiff's claim is _____	l. for work done as a surveyor.	Work done.
The plaintiff's claim is _____	l. for board and lodging.	Board and
		lodging.
The plaintiff's claim is _____	l. for the board, lodging and tuition	Schooling.
of X. Y.		
The plaintiff's claim is _____	l. for money received by the de-	Money re-
fendant as solicitor [<i>or factor, or collector, or, &c.</i>] of the plaintiff.		ceived.
The plaintiff's claim is _____	l. for fees received by the defendant	Fees of
under colour of the office of _____		office.
The plaintiff's claim is _____	l. for a return of money over-	Money
charged for the carriage of goods by railway.		overpaid.
The plaintiff's claim is _____	l. for a return of fees overcharged	
by the defendant as _____		
The plaintiff's claim is _____	l. for a return of money deposited	Return of
with the defendant as stakeholder.		money by
		stakeholder.

Part II.
Indorse-
ments.

Money won from stakeholder.	The plaintiff's claim is defendant as stakeholder, and become payable to plaintiff.	<i>l.</i> for money entrusted to the defendant as stakeholder, and become payable to plaintiff.
Money entrusted to agent.	The plaintiff's claim is to the defendant as agent to the plaintiff.	<i>l.</i> for a return of money entrusted to the defendant as agent to the plaintiff.
Money obtained by fraud.	The plaintiff's claim is from the plaintiff by fraud.	<i>l.</i> for a return of money obtained from the plaintiff by fraud.
Money paid by mistake.	The plaintiff's claim is the defendant by mistake.	<i>l.</i> for a return of money paid to the defendant by mistake.
Money paid for consideration which has failed.	The plaintiff's claim is the defendant for [<i>work to be done, left undone; or, a bill to be taken up; not taken up, &c.</i>]	<i>l.</i> for a return of money paid to the defendant for [<i>work to be done, left undone; or, a bill to be taken up; not taken up, &c.</i>]
	The plaintiff's claim is deposit upon shares to be allotted.	<i>l.</i> for a return of money paid as a deposit upon shares to be allotted.
Money paid by surety for defendant.	The plaintiff's claim is as his surety.	<i>l.</i> for money paid for the defendant as his surety.
Rent paid.	The plaintiff's claim is the defendant.	<i>l.</i> for money paid for rent due by the defendant.
Money paid on accommodation bill.	The plaintiff's claim is [<i>or indorsed</i>] for the defendant's accommodation.	<i>l.</i> upon a bill of exchange accepted [<i>or indorsed</i>] for the defendant's accommodation.
Contribution by surety.	The plaintiff's claim is money paid by the plaintiff as surety.	<i>l.</i> for a contribution in respect of money paid by the plaintiff as surety.
By co-debtor	The plaintiff's claim is a joint debt of the plaintiff and the defendant, paid by the plaintiff.	<i>l.</i> for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.
Money paid for calls.	The plaintiff's claim is shares, against which the defendant was bound to indemnify the plaintiff.	<i>l.</i> for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.
Money payable under award.	The plaintiff's claim is award.	<i>l.</i> for money payable under an award.
Life policy.	The plaintiff's claim is the life of <i>X. Y.</i> , deceased.	<i>l.</i> upon a policy of insurance upon the life of <i>X. Y.</i> , deceased.
Money bond	The plaintiff's claim is of 1,000 <i>l.</i> , and interest.	<i>l.</i> upon a bond to secure payment of 1,000 <i>l.</i> , and interest.
Foreign judgment.	The plaintiff's claim is Court, in the Empire of Russia.	<i>l.</i> upon a judgment of the Court, in the Empire of Russia.
Bill of exchange, &c.	The plaintiff's claim is defendant.	<i>l.</i> upon a cheque drawn by the defendant.
	The plaintiff's claim is [<i>or drawn or indorsed</i>] by the defendant.	<i>l.</i> upon a bill of exchange accepted [<i>or drawn or indorsed</i>] by the defendant.
	The plaintiff's claim is	<i>l.</i> upon a promissory note made [<i>or indorsed</i>] by the defendant.
	The plaintiff's claim is acceptor, and against the defendant <i>C. D.</i> as drawer [<i>or indorser</i>] of a bill of exchange.	<i>l.</i> against the defendant <i>A. B.</i> as acceptor, and against the defendant <i>C. D.</i> as drawer [<i>or indorser</i>] of a bill of exchange.
Surety.	The plaintiff's claim is for the price of goods sold.	<i>l.</i> against the defendant as surety for the price of goods sold.
	The plaintiff's claim is principal, and against the defendant <i>C. D.</i> as surety for the price of goods sold [<i>or arrears of rent, or for money lent, or for money received by the defendant A. B., as traveller for the plaintiffs, or, &c.</i>]	<i>l.</i> against the defendant <i>A. B.</i> as principal, and against the defendant <i>C. D.</i> as surety for the price of goods sold [<i>or arrears of rent, or for money lent, or for money received by the defendant A. B., as traveller for the plaintiffs, or, &c.</i>]
<i>Del credere</i> agent.	The plaintiff's claim is <i>credere</i> agent for the price of goods sold [<i>or as losses under a policy</i>].	<i>l.</i> against the defendant as a <i>del credere</i> agent for the price of goods sold [<i>or as losses under a policy</i>].
Calls.	The plaintiff's claim is	<i>l.</i> for calls upon shares.
Waygoing crops, &c.	The plaintiff's claim is	<i>l.</i> for crops, tillage, manure [<i>or as the case may be</i>] left by the defendant as outgoing tenant of a farm.

SECTION III.

Indorsement for Costs, &c. [add to the above Forms].

And *l.* for costs; and if the amount claimed be paid to the plaintiff or his solicitor within four days [or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time for appearance limited by the order] from the service hereof, further proceedings will be stayed.

SECTION IV.

Damages and other Claims.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller. Agent, &c.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and *l.* for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [or, &c.] of the plaintiff [and *l.* for money received as factor, &c.].

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant [or plaintiff]. Apprentices.

The plaintiff's claim is for damages for non-compliance with the award of X. Y. Arbitration.

The plaintiff's claim is for damages for assault [and false imprisonment, and for malicious prosecution]. Assault, &c.

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff C. D. By husband and wife.

The plaintiff's claim is for damages for assault by the defendant C. D. Against husband and wife.

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff. Solicitor.

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same]. Bailment.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same]. Pledge.

The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire [or a carriage lent], [and for wrongfully &c.]. Hire.

The plaintiff's claim is for damages for wrongfully neglecting [or refusing] to pay the plaintiff's cheque. Banker

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts. Bill.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a Bond.

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway. Carrier.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for damages for breach of charter-party of ship [Mary]. Charter-party.

The plaintiff's claim is for return of household furniture, or, &c., or their value, and for damages for detaining the same. Claim for return of goods; damages.

Part II.
Indorsements.

- Damages for depriving of goods. The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.
- Defamation. The plaintiff's claim is for damages for libel.
The plaintiff's claim is for damages for slander.
- Distress. The plaintiff's claim is in replevin for goods wrongfully distrained.
- Replevin. The plaintiff's claim is for damages for improperly distraining.
- Wrongful distress. [*This Form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.*]
- Ejectment. The plaintiff's claim is to recover possession of a house, No. 14 Ch. D. 1878 in street, or of a farm called Blackacre, situate in the parish of in the county of
- To establish title and recover rents. The plaintiff's claim is to establish his title to [*here describe property*], and to recover the rents thereof.
[*The two previous Forms may be combined.*]
- Dower. The plaintiff's claim is for dower.
- Fishery. The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.
- Fraud. The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [*or a business, or shares, or, &c.*]
The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A. B.
- Guarantee. The plaintiff's claim is for damages for breach of a contract of guarantee for A. B.
The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.
- Insurance. The plaintiff's claim is for a loss under a policy upon the ship "Royal Charter," and freight or cargo [*or for return of premiums.*]
[*This form shall be sufficient whether the loss claimed be total or partial.*]
- Fire insurance. The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.
The plaintiff's claim is for damages for breach of a contract to insure a house.
- Landlord and tenant. The plaintiff's claim is for damages for breach of contract to keep a house in repair.
The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.
- Medical man. The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.
- Mischievous animal. The plaintiff's claim is for damages for injury by the defendant's dog.
- Negligence. The plaintiff's claim is for damages for injury to the plaintiff [*or, if by husband and wife, to the plaintiff, C. D.*] by the negligent driving of the defendant or his servants.
The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.
The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.
- Lord Campbell's Act. The plaintiff's claim is as executor of A. B. deceased, for damages for the death of the said A. B., from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.
- Promise of marriage. The plaintiff's claim is for damages for breach of promise of marriage.
- Quare impedit. The plaintiff's claim is in quare impedit for
- Seduction. The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.

The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

Sale of goods.

The plaintiff's claim is for damages for non-delivery [or short delivery, or defective quality, or other breach of contract of sale] of cotton [or, &c.]

The plaintiff's claim is for damages for breach of warranty of a horse.

The plaintiff's claim is for damages for breach of a contract to sell [or purchase] land.

Sale of land.

The plaintiff's claim is for damages for breach of a contract to let [or take] a house.

The plaintiff's claim is for damages for breach of a contract to sell [or purchase] the lease, with goodwill, fixtures, and stock in trade of a public-house.

The plaintiff's claim is for damages for breach of covenant for title [or for quiet enjoyment, or, &c.] in a conveyance of land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [or cutting his grass, or pulling down his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river].

Trespass to land.

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [or house, or mine].

Support.

The plaintiff's claim is for damages for wrongfully obstructing a way [public highway or a private way].

Way.

The plaintiff's claim is for damages for wrongfully diverting [or obstructing, or polluting, or diverting water from] a watercourse.

Watercourse &c.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [or into the plaintiff's mine].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.

Pasture.

[This Form shall be sufficient whatever the nature of the right to pasture be.]

The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.

Light.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of sporting.

Sporting.

The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

Patent.

The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.

Copyright.

The plaintiff's claim is for damages for wrongfully using [or imitating] the plaintiff's trade mark.

Trade mark.

The plaintiff's claim is for damages for breach of a contract to build a ship [or to repair a house, &c.]

Work.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [or, &c.]

The plaintiff's claim is for damages from nuisance by noise from the defendant's works [or stables, or, &c.]

Nuisance.

The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn.

Innkeeper.

Add to Indorsement :—

And for a mandamus.

Mandamus.

Part II.
Indorse-
ments.
--
Injunction.

Mesne
profits.
Arrears of
rent.
Breach of
covenant.

Add to Indorsement :—

And for an Injunction.

[Add to Indorsement where claim is to bond, or to establish title, or both.]

And for mesne profits.

And for an account of rents or arrears of rent.

And for breach of covenant for [repairs].

SECTION V.

Probate.

1. *By an executor or legatee propounding a will in solemn form.*

The plaintiff claims to be executor of the last will dated the
day of _____ of C. H., late of _____
Gentleman, deceased, who died on
the _____ day of _____
and to have the said will established. This writ is issued against
you as one of the next of kin of the said deceased [or as the case
may be].

2. *By an executor or legatee of a former will, or next of kin, &c.,
of the deceased seeking to obtain the revocation of a Probate granted
in common form.*

The plaintiff claims to be executor of the last will dated the
day of _____ of C. D., late of _____
Gentleman, deceased, who died on
the _____ day of _____
and to have the probate of a pretended will of the said deceased,
dated the _____ day of _____ revoked.
This writ is issued against you as the executor of the said pretended
will [or as the case may be].

3. *By an executor or legatee of a will when letters of administration
have been granted as in an intestacy.*

The plaintiff claims to be the executor of the last will of C. D.,
late of _____ Gentleman, deceased, who
died on the _____ day of _____
dated the _____ day of _____

The plaintiff claims that the grant of letters of administration of
the personal estate of the said deceased obtained by you should be
revoked, and probate of the said will granted to him.

4. *By a person claiming a grant of administration as a next of
kin of the deceased, but whose interest as next of kin is disputed.*

The plaintiff claims to be the brother and sole next of kin of
C. D., of _____ Gentleman, deceased, who
died on the _____ day of _____
intestate, and to have as such a grant of administration to the
personal estate of the said intestate. This writ is issued against
you because you have entered a caveat, and have alleged that you
are the sole next of kin of the deceased [or as the case may be].

(g) SECTION VI.

Admiralty.

1. *Damage to vessel by collision.*

The plaintiffs as owners of the vessel "Mary" of the port of _____
claim 1000*l.* against the brig or vessel "Jane" for

damage occasioned by a collision which took place in the North Sea in the month of May last.

Part II
Indorsements.

2. *Damage to cargo by collision.*

The plaintiffs as owners of the cargo laden on board the vessel "Mary," of the port of _____, claim £ _____ against the vessel "Jane," for damage done to the said cargo in a collision in the North Sea in the month of May last.

[The two previous forms may be combined.]

3. *Damage to cargo otherwise.*

The plaintiff as owner of goods laden on board the vessel "Mary," on a voyage from Lisbon to England, claims from the owner of the said vessel £ _____ for damage done to the said goods during such voyage.

4. *In causes of possession.*

The plaintiff as sole owner of the vessel "Mary," of the port of _____ claims to have possession decreed to him of the said vessel.

5. The plaintiff claims possession of the vessel "Mary," of the port of _____ as owner of 48-64th shares of the said vessel against C. D., owner of 16-64th shares of the said vessel.

6. The plaintiff as part owner of the vessel "Mary," claims against C. D., part owner and his shares in the said vessel £ _____ as part of the earnings of the said vessel due to the plaintiff.

7. The plaintiff as owner of 48-64th shares of the vessel "Mary," of the port of _____, claims possession of the said brig as against C. D., the master thereof.

8. The plaintiff under a mortgage, dated the _____ day of _____ claims against the vessel "Mary," £ _____, being the amount of his mortgage thereon, and £ _____ for interest.

9. The plaintiff as assignee of a bottomry bond, dated the _____ day of _____, and granted by C. D., as master of the vessel "Mary," of the port of _____, to A. B., at St. Thomas's, in the West Indies, claims £ _____ against the vessel "Mary," and the cargo laden thereon.

10. *By a part owner of the vessel.*

The plaintiff as owner of 24-64th shares of the vessel "Mary," being dissatisfied with the management of the said vessel by his co-owners, claims that his co-owners shall give him a bond in £ _____ for the value of the plaintiff's said shares in the said vessel.

11. The plaintiffs as owners of the derelict vessel "Mary," of the port of _____, claim to be put in possession of the said vessel and her cargo.

12. *By salvors.*

The plaintiffs as the owners, master, and crew of the vessel "Caroline," of the port of _____, claim the sum of £ _____ for salvage services performed by them to the vessel "Mary," off the Goodwin Sands, on the _____ day of _____.

13. *Claim for towage.*

The plaintiffs as owners of the steam-tug "Jane," of the port of _____, claim £ _____ for towage services performed by the said steam-tug to the vessel "Mary," on the _____ day of _____.

14. *Seamen's wages.*

The plaintiffs as seamen on board the vessel "Mary," claim £ _____ for wages due to them, as follows (1), the mate 30*l.* for two months' wages from the _____ day of _____.

Part II.
Indorse-
ments.

15. *For necessaries.*

The plaintiff's claim £ for necessaries supplied to the vessel "Mary," at the port of Newcastle-on-Tyne, delivered on the day of and the day of .

SECTION VII.

Special Indorsements under Order III., Rule 6.

1. The plaintiff's claim is for the price of goods sold. The following are the particulars :—

1873—31st December.—

Balance of account for butcher's meat to this	£	s.	d.
date	35	10	0

1874—1st January to 31st March.—

Butcher's meat supplied	74	5	0
-----------------------------------	----	---	---

	109	15	0
--	-----	----	---

1874—1st February. —Paid	45	0	0
------------------------------------	----	---	---

Balance due	64	15	0
-----------------------	----	----	---

2. The plaintiff's claim is against the defendant *A. B.* as principal, and against the defendant *C. D.* as surety, for the price of goods sold to *A. B.* The following are the particulars :—

1874—2nd February. Guarantee by *C. D.* of the price of woollen goods to be supplied to *A. B.*

2nd February—To goods	47	15	0
---------------------------------	----	----	---

3rd March—To goods	105	14	0
------------------------------	-----	----	---

17th March—To goods	14	12	0
-------------------------------	----	----	---

5th April—To goods	34	0	0
------------------------------	----	---	---

	202	1	0
--	-----	---	---

3. The plaintiff's claim is against the defendant, as maker of a promissory note. The following are the particulars :—

Promissory note for 250*l.*, dated 1st January 1874, made by defendant, payable four months after date.

Principal	£	250
---------------------	---	-----

Interest		
--------------------	--	--

4. The plaintiff's claim is against the defendant *A. B.* as acceptor, and against the defendant *C. D.* as drawer, of a bill of exchange. The following are the particulars :—

Bill of exchange for 500*l.*, dated 1st January, 1874, drawn by defendant *C. D.* upon and accepted by defendant *A. B.*, payable three months after date.

Principal	£	500
---------------------	---	-----

Interest		
--------------------	--	--

5. The plaintiff's claim is for principal and interest due upon a bond. The following are the particulars :—

Bond dated 1st January, 1873. Condition for payment of 100*l.* on the 26th December, 1873.

Principal due	£	50
-------------------------	---	----

Interest		
--------------------	--	--

6. The plaintiff's claim is for principal and interest due under a covenant. The following are the particulars :—

Deed dated covenant to pay 100*l.* and interest.

Principal due	£	Part II.
Interest	80	Indorsements.

SECTION VIII.

Indorsements of Character of Parties.

The plaintiff's claim is as executor [*or administrator*] of *C. D.*, deceased, for, &c. Executors.

The plaintiff's claim is against the defendant *A. B.*, as executor [*or, &c.*] of *C. D.*, deceased, for, &c.

The plaintiffs claim is against the defendant *A. B.*, as executor of *X. Y.*, deceased, and against the defendant *C. D.*, in his personal capacity for, &c.

The claim of the plaintiff *C. D.* is as executrix of *X. Y.*, deceased, and the claim of the plaintiff *A. B.* as her husband, for By husband and wife, executrix.

The claim of the plaintiff is against the defendant *C. D.*, as executrix of the defendant *C. D.*, deceased, and against the defendant *A. B.*, as her husband, for Against husband and wife, executrix.

The plaintiff's claim is as trustee under the bankruptcy of *A. B.*, for

The plaintiff's claim is against the defendant as trustee under the bankruptcy of *A. B.*, for Trustee in bankruptcy.

The plaintiff's claim is as [*or the plaintiff's claim is against the defendant as*] trustee under the will of *A. B.* [*or under the settlement upon the marriage of A. B. and X. Y., his wife*]. Trustees.

The plaintiff's claim is as public officer of the Bank, for

The plaintiff's claim is against the defendant as public officer of the Bank, for Public officer.

The plaintiff's claim is against the defendant *A. B.* as principal, and against the defendant *C. D.* as public officer of the Bank, as surety, for

The plaintiff's claim is against the defendant as heir-at-law of *A. B.*, deceased. Heir and devisee.

The plaintiff's claim is against the defendant *C. D.* as heir-at-law, and against the defendant *E. F.* as devisee of lands under the will of *A. B.*

The plaintiff's claim is as well for the Queen as for himself, for *Qui tam* action.

APPENDIX (B).

FORM I.

Notice by Defendant to Third Party.

187 . [*Here put the letter and number.*]
 Notice filed , 187 .

In the High Court.
 Queen's Bench Division.

Between *A. B.*, plaintiff,
 and
C. D., defendant.

To Mr. *X. Y.*

Take notice that this action has been brought by the plaintiff

Forms.

against the defendant [as surety for *M. N.*, upon a bond conditioned for payment of 2000*l.* and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are (his co-surety under the said bond, *or*, also surety for the said *M. N.*, in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of , A.D.).

Or [as acceptor of a bill of exchange for 500*l.*, dated the day of , A.D. , drawn by you before and accepted by the defendant and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.]

Or [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C. D.*, you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will not be entitled in any future proceeding between the defendant *C. D.* and yourself to dispute the validity of the judgment in this action whether obtained by consent or otherwise.

(Signed) *E. T.**Or,**X. Y.,*

Solicitor for the defendant,

E. T.

Appearance to be entered at

FORM 2.

187 . [Here put the letter and number.]

In the High Court.
Queen's Bench Division.Between *A. B.*, plaintiff,

and

C. D., defendant.

The plaintiff confesses the defence stated in the paragraph of the defendant's statement of defence [*or*, of the defendant's further statement of defence].

FORM 3.

187 . [Here put the letter and number.]

In the High Court of Justice.
Division.Between *A. B.*, plaintiff,

and

C. D., defendant.

The particulars of the plaintiff's complaint herein, and of the relief and remedy to which he claims to be entitled, appear by the indorsement upon the writ of summons.

FORM 4.

Forms.

“To the within-named X. Y.

“Take notice that if you do not appear to the within counter-claim of the within-named C. D. within eight days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

“Appearances are to be entered at _____.”

FORM 5.

Notice of Payment into Court.

In the High Court of Justice.

1875. B. No.

Q. B. Division.

A. B. v. C. D.

Take notice that the defendant has paid into Court £ _____, and says that that sum is enough to satisfy the plaintiff's claim (or the plaintiff's claim for, &c.)

To Mr. X. Y.,

the Plaintiff's Solicitor.

Z.,

Defendant's Solicitor.

FORM 6.

Acceptance of sum paid into Court.

In the High Court of Justice.

1875. B. No.

Q. B. Division.

A. B. v. C. D.

Take notice that the plaintiff accepts the sum of £ _____ paid by you into Court in satisfaction of the claim in respect of which it is paid in.

FORM 7.

Form of Interrogatories.

In the High Court of Justice.

1874. B. No.

Division.

Between A. B., Plaintiff,

and

C. D., E. F., and G. H., Defendants.

Interrogatories on behalf of the above-named [plaintiff or defendant, C. D.] for the examination of the above-named [defendants E. F. and G. H., or plaintiff].

1. Did not, &c.

2. Has not, &c.

&c.

&c. &c.

[The defendant E. F. is required to answer the interrogatories numbered .]

[The defendant G. H. is required to answer the interrogatories numbered .]

FORM 8.

Form of Answer to Interrogatories.

In the High Court of Justice.

1874. B. No.

Division.

Between A. B., Plaintiff,

and

C. D., E. F., and G. H., Defendants.

The answer of the above-named defendant E. F. to the interrogatories for his examination by the above-named plaintiff.

Forms.
—

In answer to the said interrogatories, I, the above-named *E. F.*,
make oath and say as follows :—

.....
.....

FORM 9.

Form of Affidavit as to Documents.

In the High Court of Justice.

1874. B. No.

Division.

Between *A. B.*, Plaintiff,

and

C. D., Defendant.

I, the above-named defendant *C. D.*, make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

FORM 10.

Form of Notice to produce Documents.

In the High Court of Justice.

Q. B. Division.

A. B. v. *C. D.*

Take notice that the [*plaintiff*] or [*defendant*] requires you to produce for his inspection the following documents referred to in your [*statement of claim*, or [*defence*, or [*affidavit*, dated the _____ day of _____ A.D. _____].

Describe documents required.

X. Y.,

Solicitor to the

To Z.,

Solicitor for

FORM 11.

Forms.

Form of Notice to inspect Documents.

In the High Court of Justice.

Q. B. Division.

A. B. v. C. D.

Take notice that you can inspect the documents mentioned in your notice of the _____ day of _____ A.D. [*except the deed numbered _____ in that notice*] at my office on Thursday next, the instant, between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff or defendant*] objects to give you inspection of the documents mentioned in your notice of the _____ day of _____ A.D. _____, on the ground that [*state the ground*]:—

FORM 12.

Form of Notice to admit Documents.

In the High Court of Justice.

Division.

A. B. v. C. D.

Take notice that the plaintiff [*or defendant*] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*], his solicitor or agent, at _____, on _____ between the hours of _____; and the defendant [*or plaintiff*] is hereby required, within forty-eight hours from the last-mentioned hour to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

To *E. F.*, solicitor [*or agent*] for defendant [*or plaintiff*].*G. H.*, solicitor [*or agent*] for plaintiff [*or defendant*].

[*Here describe the documents, the manner of doing which may be as follows:—*]

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between <i>A. B.</i> and <i>C. D.</i> first part, and <i>E. F.</i> second part	January 1, 1848.
Indenture of lease from <i>A. B.</i> to <i>C. D.</i>	February, 1, 1848.
Indenture of release between <i>A. B.</i> , <i>C. D.</i> first part, &c.	February 2, 1848.
Letter, defendant to plaintiff	March 1, 1848.
Policy of insurance on goods by ship " <i>Isabella</i> ," on voyage from Oporto to London	December 3, 1847.
Memorandum of agreement between <i>C. D.</i> , captain of said ship, and <i>E. F.</i>	January 1, 1848.
Bill of exchange for £100 at three months, drawn by <i>A. B.</i> on and accepted by <i>C. D.</i> , indorsed by <i>E. F.</i> and <i>G. H.</i>	May 1, 1849.

Forms.

COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Register of baptism of <i>A. B.</i> in the parish of <i>X.</i>	January 1, 1848 .	
Letter—plaintiff to defendant .	February 1, 1848 .	Sent by General Post, February 2, 1848.
Notice to produce papers . . .	March 1, 1848 .	Served March 2, 1848, on defendant's attorney by <i>E. F.</i> , of—
Record of a Judgment of the Court of Queen's Bench in an action, <i>J. S. v. J. N.</i> . . .	Trinity Term, 10th Vict. . . .	
Letters Patent of King Charles II. in the Rolls Chapel	January 1, 1680 .	

FORM 13.

Setting down Special Case.

1875. B. No.

In the High Court of Justice.

Division.

Between *A. B.*, Plaintiff,
and*C. D.* and others, Defendants.Set down for argument the special case filed in this action on the
day of _____, 187 .*X. Y.*, solicitor for

FORM 14.

Form of Notice of Trial.

In the High Court of Justice.

Division.

*A. B. v. C. D.*Take notice of trial of this action [*or of the issues in this action ordered to be tried*] by a judge and jury [*or as the case may be*] in Middlesex, [*or as the case may be*] for the _____ day of _____ next.*X. Y.*, plaintiff's solicitor [*or as the case may be*].

Dated.

To *Z.*, defendant's solicitor [*or as the case may be*].

FORM 15.

Form of Certificate of Officer after Trial by a Jury.

30th November, 1876.

1876. No.

In the High Court of Justice.

Division.

Between *A. B.*, Plaintiff,
and*C. D.*, Defendant.

I certify that this action was tried before the Honourable Mr Justice _____ and a special jury of the county of _____ on the 12th and 13th days of November, 1876.

The jury found [*state findings*].

The Judge directed that judgment should be entered for the Pleadings.
 plaintiff for *l.* with costs of summons [*or as the case may be*].

A. B.,
 [Title of Officer.]

FORM 16.

Affidavit of Scripts.

In the High Court of Justice.

Probate Division.

Between *A. B.* Plaintiff,

and

C. D. Defendant.I, *A. B.*, of, in the county of

. . . ., party in this cause, make oath and say, that no paper or parchment writing, being or purporting to be, or having the form or effect of a will or codicil or other testamentary disposition of *E. F.*, late of, in the county of, deceased, the deceased in this cause, or being or purporting to be instructions for, or the draft of, any will, codicil, or testamentary disposition of the said *E. F.*, has at any time, either before or since his death, come to the hands, possession, or knowledge of me, this deponent, or to the hands, possession, or knowledge of my solicitors in this suit, so far as is known to me, this deponent, save and except the true and original last will and testament of the said deceased now remaining in the principal registry of this Court [*or hereunto annexed, or as the case may be*], the said will bearing date the day of 18 [*or as the case may be*], also save and except [*here add the dates and particulars of any other testamentary papers of which the deponent has any knowledge.*]

(Signed) *A. B.*Sworn at on the day of 18
 Before me,[*Person authorized to administer oaths under the Act.*]

APPENDIX (C.)

No. 1.

In the High Court of Justice.

187 B. No.

ACCOUNT
STATED.

Division.

Writ issued 3rd August, 1875.

Between *A. B.* Plaintiff,

and

E. F. Defendant.*Statement of Claim.*

1. Between the 1st of January and the 28th of February, 1875, Claim, the plaintiff supplied to the defendant various articles of drapery; and accounts and invoices of the goods so supplied, and their prices, were from time to time furnished to the defendant, and payments on account were from time to time made by the defendant.

2. On the 28th of February, 1875, a balance remained due to the plaintiff of 75*l.* 9*s.*, and an account was on that day sent by the plaintiff to the defendant showing that balance.

Pleadings.

3. On the 1st of March following, the plaintiff's collector saw the defendant at his house, and asked for payment of the said balance, and the defendant then paid him by cheque 25*l.* on account of the same. The residue of the said balance, amounting to 50*l.* 9*s.*, has never been paid.

The plaintiff claims £

The plaintiff proposes that this action should be tried in the county of Northampton.

No. 2.

[1876. B. No. 233.]

ADMINIS-
TRATION OF
ESTATE.

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]

Writ issued 22nd December, 1876.

In the matter of the estate of *A. B.*, deceased.Between *E. F.* Plaintiff.

and

G. H. Defendant.*Statement of Claim.*

Claim.

1. *A. B.*, of *K.*, in the county of *L.*, died on the 1st of July, 1875, intestate. The defendant *G. H.* is the administrator of *A. B.*

2. *A. B.* died entitled to lands in the said county for an estate of fee simple, and also to some other real estate and to personal estate. The defendant has entered possession of the real estate of *A. B.*, and received the rents thereof. The legal estate in such real estate is outstanding in mortgages under mortgages created by the intestate.

3. *A. B.* was never married; he had one brother only, who pre-deceased him without having been married, and two sisters only, both of whom also pre-deceased him, namely *M. N.* and *P. Q.* The plaintiff is the only child of *M. N.*, and the defendant is the only child of *P. Q.*

The plaintiff claims—

1. To have the real and personal estate of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken.
2. To have a receiver appointed of the rents of his real estate.
3. Such further or other relief as the nature of the case may require.

[1876. B. No. 233.]

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]In the matter of the estate of *A. B.*, deceased.Between *E. F.* Plaintiff,

and

G. H. Defendant.*Statement of Defence.*

Defence.

1. The plaintiff is an illegitimate child of *M. N.* She was never married.

2. The intestate was not entitled to any real estate at his death, except a copyhold estate situate in the county of *R.*, and held of the manor of *S.* According to the custom of that manor, when the copyholder dies without issue, and without leaving a brother, or issue of a deceased brother, the copyhold descends to his elder sister

and her issue in preference to his younger sister and her issue. *P. Q.* Pleadings.
was older than *M. N.*

3. The personal estate of *A. B.* was not sufficient for the payment of his debts, and has all been applied in payment of his funeral and testamentary expenses, and part of his debts.

[1876. B. No. 233.]

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]

In the matter of the estate of *A. B.*, deceased.

Between *E. F.* Plaintiff,

and

G. H. Defendant.

Reply.

The plaintiff joins issue with the defendant upon his defence. *Reply*

No. 3.

[1876. B. No. 234.]

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]

Writ issued 22nd December, 1876.

In the matter of the estate of *A. B.*, deceased.

Between *E. F.* Plaintiff,

and

G. H. Defendant

1. *A. B.*, of *K.*, in the county of *L.*, duly made his last will, dated *Claim.*
the 1st day of March, 1873, whereby he appointed the defendant and *M. N.* (who died in the testator's lifetime) executors thereof, and devised and bequeathed his real and personal estate to and to the use of his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain 21, or a daughter who should attain that age, or marry, upon trust as to his real estate for the person who would be the testator's heir-at-law, and as to his personal estate for the persons who would be the testator's next of kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the 1st day of July, 1873, and his will was proved by the defendant on the 4th of October, 1873. The plaintiff has not been married.

3. The testator was at his death entitled to real and personal estate; the defendant entered into the receipt of the rents of the real estate and got in the personal estate; he has sold some part of the real estate.

The plaintiff claims—

1. To have the real and personal estate of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken.
2. Such further or other relief as the nature of the case may require.

Pleadings.

[1876. B. No. 234.]

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]In the matter of the estate of *A. B.*, deceased.Between *E. F.* Plaintiff,

and

G. H. Defendant.*Statement of Defence.*

Defence.

1. *A. B.*'s will contained a charge of debts; he died insolvent: he was entitled at his death to some real estate which the defendant sold, and which produced the net sum of 4300*l.*, and the testator had some personal estate which the defendant got in and which produced the net sum of 1204*l.* The defendant applied the whole of the said sums and the sum of 84*l.* which the defendant received from rents of the real estate in the payment of the funeral and testamentary expenses and some of the debts of the testator. The defendant made up his accounts and sent a copy thereof to the plaintiff on the 10th of January, 1875, and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer. The defendant submits that the plaintiff ought to pay the costs of this action.

[1876. B. No. 234.]

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]In the matter of the estate of *A. B.*, deceased.Between *E. F.* Plaintiff,

and

G. H. Defendant.*Reply.*

Reply.

The plaintiff joins issue with the defendant upon his defence.

No. 4.

[1876. B. No. 235.]

In the High Court of Justice.

Chancery Division.

[*Name of Judge.*]In the matter of the estate of *W. H.*, deceased.

Writ issued 22nd December, 1876.

Between *A. B.* and *C.* his wife Plaintiffs,

and

E. F. and *G. H.* Defendants.*Statement of Claim.*

Claim

1. *W. H.*, of *H.*, in the county of *L.*, duly made his last will dated the 19th day of March, 1861, whereby he appointed the defendants the executors thereof, and bequeathed to them all his personal estate in trust, to call in, sell, and convert the same into money, and thereout to pay his debts and funeral and testamentary expenses, and to divide the ultimate surplus into three shares, and to pay one of such three shares to each of his two children, *T. H.*, and *E.*, the wife of *E. W.*, and to stand possessed of the remaining third share upon trust for the children of the testator's son, *J. H.*, in equal shares to be divided among them when the youngest of such children should attain the

age of 21 years. And the testator devised his real estates to the defendants upon trust until the youngest child of the said J. H. should attain the age of 21 years, to pay one third part of the rents thereof to the said T. H., and one other third part thereof to the said E. W., and to accumulate the remaining third part by way of compound interest, and so soon as the youngest child of the said J. H. should attain the age of 21 years, to sell the said real estates, and out of the proceeds of such sale to pay the sum of 1000*l.* to the said T. H., and to invest one moiety of the residue in manner therein mentioned, and stand possessed thereof in trust to pay the income thereof to the said E., the wife of the said E. W., during her life for her separate use, and after her death for her children, the interests of such children being contingent on their attaining the age of 21 years, and to divide the other moiety of such proceeds of sale and the accumulations of the third share of rents therein-before directed to be accumulated among such of the children of the said J. H. as should be then living, and the issue of such of them as should be then dead, in equal shares per stirpes.

2. The testator died on the 25th day of April 1873, and his said will was proved by the defendants in the month of June 1873.

3. The testator died possessed of one third share in a leasehold colliery called the Paradise colliery, and in the engines, machinery, stock in trade, book debts, and effects belonging thereto. He was also entitled to real estate, and other personal estate.

4. The testator left T. H. and E., the wife of E. W., him surviving. J. H. had died in the testator's lifetime, leaving four children, and no more. The plaintiff C. B. is the youngest of the children of J. H., and attained the age of 21 years on the 1st of June 1871. The other three children of J. H. died without issue in the lifetime of the testator.

5. E. W. has several children, but no child has attained the age of 21 years.

6. T. H. is the testator's heir-at-law.

7. The defendants have not called in, sold, and converted into money the whole of the testator's personal estate, but have allowed a considerable part thereof to remain outstanding; and in particular the defendants have not called in, sold, or converted into money the testator's interest in the said colliery, but have, from the death of the testator to the present time, continued to work the same in partnership with the other persons interested therein. The estate of the testator has sustained considerable loss by reason of such interest not having been called in, sold, or converted into money.

8. The defendants did not upon the death of the testator sell the testator's furniture, plate, linen, and china, but allowed the testator's widow to possess herself of a great part thereof, without accounting for the same, and the same has thereby been lost to the testator's estate.

9. The defendants have not invested the share of the testator's residuary personal estate given by his will to the children of the testator's son J. H., and have not accumulated one third of the rents and profits of his real estate as directed by the said will, but have mixed the same share and rents with their own moneys, and employed them in business on their own account.

Pleadings.

10. The defendants have sold part of the real estates of the testator but a considerable part thereof remains unsold.

11. A receiver ought to be appointed of the outstanding personal estate of the testator, and the rents and profits of the real estate remaining unsold :

The plaintiffs claim :—

1. That the estate of the said testator may be administered, and the trusts of his will carried into execution under the direction of the Court.
2. That it may be declared that the defendants, by carrying on the business of the said colliery instead of realizing the same, have committed a breach of trust, and that the parties interested in the testator's estate are entitled to the value of the testator's interest in the said partnership property as it stood at the testator's death, with interest thereon, or at their election to the profits which have been made by the defendants in respect thereof since the testator's death, whichever shall be found most for their benefit.
3. That an account may be taken of the interest of the testator in the said colliery, and in the machinery, book debts, stock, and effects belonging thereto, according to the value thereof at the testator's death, and an account of all sums of money received by or by the order, or for the use of the defendants, or either of them, on account of the testator's interest in the said colliery, and that the defendants may be ordered to make good to the estate of the testator the loss arising from their not having realized the interest of the testator in the said colliery within a reasonable time after his decease.
4. That an account may be taken of all other personal estate of the testator come to the hands of the defendants, or either of them, or to the hands of any other person by their or either of their order, or for their or either of their use, or which, but for their wilful neglect or default, might have been so received ; and an account of the rents and profits of the testator's real estate, and the moneys arising from the sale thereof, possessed or received by or by the order, or for the use of the defendants, or either of them.
5. That the real estate of the testator remaining unsold may be sold under the direction of the Court.
6. That the defendants may be decreed, at the election of the parties interested in the testator's estate, either to pay interest at the rate of 5*l.* per cent. per annum upon such moneys belonging to the estate of the testator as they have improperly mixed with their own moneys and employed in business on their own account, and that half-yearly rests may be made in taking such account as respects all moneys which by the said will were directed to be accumulated, or to account for all profits by the employment in their business of the said trust money.
7. That a receiver may be appointed of the outstanding personal estate of the testator, and to receive the rents and profits of his real estate remaining unsold.
8. Such further or other relief as the nature of the case may require.

[1876. B. 235.] Pleadings.

In the High Court of Justice.

Chancery Division.

[Name of Judge.]

Between *A. B.* and *C.* his wife . . . Plaintiffs,
 and
E. F. and *G. H.* . . . Defendants.

Statement of Defence of the above-named Defendants.

1. Shortly after the decease of the testator, the defendants, as his executors, possessed themselves of and converted into money the testator's personal estate, except his share in the colliery mentioned in the plaintiff's statement of claim. The moneys so arising were applied in payment of part of the testator's debts and funeral and testamentary expenses, but such moneys were not sufficient for the payment thereof in full. Defence.

2. The Paradise Colliery was, at the testator's decease, worked by him in partnership with *J. Y.*, and *W. Y.*, and *T. Y.*, both since deceased. No written articles of partnership had been entered into, and for many years the testator had not taken any part in the management of the said colliery, but it was managed exclusively by the other partners, and the defendants did not know with certainty to what share therein the testator was entitled.

3. Upon the death of the testator, the defendants endeavoured to ascertain the value of the testator's share in the colliery, but the other partners refused to give them any information. The defendants thereupon had the books of the colliery examined by a competent accountant, but they had been so carelessly kept that it was impossible to obtain from them any accurate information respecting the state of the concern; it was, however, ascertained that a considerable sum was due to the testator's estate.

4. Between the death of the testator and the beginning of the year 1874, the defendants made frequent applications to *J. Y.*, *W. Y.*, and *T. Y.*, for a settlement of the accounts of the colliery. Such applications having proved fruitless, the defendants in January 1874, filed their bill of complaint in the Court of Chancery against *J. Y.*, *W. Y.*, and *T. Y.*, praying for an account of the partnership dealings between the testator and the defendants thereto, and that the partnership might be wound up under the direction of the Court.

5. The said *T. Y.* died in the year 1874, and the suit was revived against *J. P.* and *T. S.*, his executors. The suit is still pending.

6. As to the Paradise Colliery, the defendants have acted to the best of their judgment for the benefit of the testator's estate, and they deny being under any liability in respect of the said colliery not having been realized. They submit to act under the direction of the Court as to the further prosecution of the said suit, and generally as to the realization of the testator's interest in the said colliery.

7. With respect to the statements in the eighth paragraph of the statement of claim, the defendants say, that upon the death of the testator, they sold the whole of his furniture, linen, and china, and also all his plate, except a few silver teaspoons of very small value, which were taken possession of by his widow, and they applied the proceeds of such sale as part of the testator's personal estate, and they deny being under any liability in respect of such furniture, linen, china, and plate.

Pleadings

8. With respect to the statements in paragraph seven of the statement of claim, the defendants say that all moneys received by them, or either of them, on account of the testator's estate, were paid by them to their executorship account at the bank of Messrs. H. & Co., and until the sale of the testator's real estate took place as hereinafter mentioned, the balance to their credit was never greater than was necessary for the administration of the trusts of the testator's will, and they therefore were unable to make any such investment or accumulation as directed by the testator's will. No moneys belonging to the testator's estate have ever been mixed with the moneys of the defendants, or either of them, nor has any money of the testator's been employed in business since the testator's decease, except that his share in the said colliery, for the reason herein-before appearing, has not been got in.

9. In 1874, after the plaintiff *C. B.* had attained her age of 21 years, the defendants sold the real estate of the testator for sums amounting to 15,080*l.*, and no part thereof remains unsold. They received the purchase moneys in December 1874, and on the day of _____, 1875, they paid such proceeds into Court to the credit of this action, with the exception of 500*l.* retained on account of costs incurred and to be incurred by them.

In the High Court of Justice.

[1876. B. No. 235.]

Chancery Division.

[*Name of Judge.*]

Between *A. B.* and *C.* his wife . . . Plaintiffs,
and
E. F. and *G. H.* . . . Defendants.

Reply

The plaintiff joins issue with the defendants upon their defence.

No. 5.

AGENT.

In the High Court of Justice, 187 . B. No.
Division.

Writ issued 3rd August 1875.

Between *A. B.* and Company . . . Plaintiffs,
and
E. F. and Company . . . Defendants.

Statement of Claim.

Claim.

1. The plaintiffs are manufacturers of artificial manures, carrying on business at _____, in the county of _____

2. The defendants are commission agents, carrying on business in London.

3. In the early part of the year _____, the plaintiffs commenced, and down to the _____ 187 _____, continued to consign to the defendants, as their agents, large quantities of their manures for sale, and the defendants sold the same, and received the price thereof and accounted to the plaintiffs therefor.

4. No express agreement has ever been entered into between the plaintiffs and the defendants with respect to the terms of the defendants' employment as agents. The defendants have always charged the plaintiffs a commission at _____ per cent. on all sales effected by them, which is the rate of commission ordinarily charged

by del credere agents in the said trade. And the defendants, in fact, always accounted to the plaintiffs for the price, whether they received the same from the purchasers or not. Pleadings.

5. The plaintiffs contend that the defendants are liable to them as del credere agents, but if not so liable are under the circumstances hereinafter mentioned liable as ordinary agents.

6. On the _____, the plaintiffs consigned to the defendants for sale a large quantity of goods, including _____ tons of _____

7. On or about the _____, the defendants sold _____ tons of _____ part of such goods to one *G. H.* for _____ *l.*, at three months credit, and delivered the same to him.

8. *G. H.* was not, at that time, in good credit, and was in insolvent circumstances, and the defendants might, by ordinary care and diligence, have ascertained the fact.

9. *G. H.* did not pay for the said goods, but before the expiration of the said three months for which credit had been given was adjudicated a bankrupt, and the plaintiffs have never received the said sum of _____ *l.*, or any part thereof.

The plaintiffs claim :—

1. Damages to the amount of _____ *l.*
2. Such further or other relief as the nature of the case may require.

The plaintiffs propose that this action should be tried in the county of _____

[Title as in claim, omitting date of issue of writ.]

Statement of Defence.

1. The defendants deny that the said commission of _____ per cent. mentioned in paragraph 4 of the claim is the rate of commission ordinarily charged by del credere agents in the said trade, and say that the same is the ordinary commission for agents other than del credere agents, and they deny that they ever accounted to the plaintiffs for the price of any goods, except after they had received the same from the purchasers. Defence.

2. The defendants deny that they were ever liable to the plaintiffs as del credere agents.

3. With respect to the eighth paragraph of the plaintiffs' statement of claim, the defendants say that at the time of the said sale to the said *G. H.*, the said *G. H.* was a person in good credit. If it be true that the said *G. H.* was then in insolvent circumstances (which the defendants do not admit), the defendants did not and had no reason to suspect the same, and could not by ordinary care or diligence have ascertained the fact.

[Title as in defence.]

Reply.

The plaintiffs join issue upon the defendants' statement of defence. Reply.

No. 6.

187 . B. No.

In the High Court of Justice.
Division.

Writ issued 3rd August 1876.

Between *A. B.* and *C. D.* Plaintiffs,
and
E. F. and *G. H.* Defendants.

BILL OF
EXCHANGE.

Pleadings.

Statement of Claim.

Claim.

1. Messrs. *M. N. & Co.*, on the _____ day of _____ drew a bill of exchange upon the defendants for _____ l. payable to the order of the said Messrs. *M. N. & Co.* three months after date, and the defendants accepted the same.

2. Messrs. *M. N. & Co.* indorsed the bill to the plaintiffs.

3. The bill became due on the _____, and the defendant has not paid it.

The plaintiffs claim :—

[Title.]

Statement of Defence.

Defence.

1. The bill of exchange mentioned in the statement of claim was drawn and accepted under the circumstances hereinafter stated, and except as hereinafter mentioned there never was any consideration for the acceptance or payment thereof by the defendants.

2. Shortly before the acceptance of the said bill it was agreed between the said Messrs. *M. N. & Co.*, the drawers thereof, and the defendants, that the said Messrs. *M. N. & Co.* should sell and deliver to the defendants free on board ship at the port of _____

1200 tons of coals during the month of _____, and that the defendants should pay for the same by accepting the said Messrs. *M. N. & Co.*'s draft for _____ l. at six months.

3. The said Messrs. *M. N. & Co.* accordingly drew upon the defendants, and the defendants accepted the bill of exchange now sued upon.

4. The defendants did all things which were necessary to entitle them to delivery by the said Messrs. *M. N. & Co.* of the said 1200 tons of coals under their said contract, and the time for delivery has long since elapsed; but the said Messrs. *M. N. & Co.* never delivered the same, or any part thereof, but have always refused to do so, whereby the consideration for the defendants' acceptance has wholly failed.

5. The plaintiffs first received the said bill, and it was first indorsed to them after it was overdue.

6. The plaintiffs never gave any value or consideration for the said bill.

7. The plaintiffs took the said bill with notice of the facts stated in the second, third, and fourth paragraphs hereof.

[Title.]

Reply.

Reply.

1. The plaintiff joins issue upon the defendants' statement of defence.

2. The plaintiff gave value and consideration for the said bill in manner following, that is to say, on the _____ day of _____ 187____, the said Messrs. *M. N. & Co.* were indebted to the plaintiff in about _____ l., the balance of an account for goods sold from time to time by him to them. On that day they ordered of the plaintiff further goods to the value of above _____ l., which last mentioned goods have since been delivered by him to them. And at the time of the order for such last mentioned goods it was agreed between Messrs. *M. N. & Co.* and the plaintiff, and the order

was received upon the terms, that they should indorse and hand over to him the bill of exchange sued upon, together with various other securities on account of the said previous balance, and the price of the goods so ordered on that day. The said securities, including the bill sued upon, were thereupon on the same day indorsed and handed over to the plaintiff.

No. 7.

187 . B. No.

In the High Court of Justice,
Division.

Writ issued 3rd August 1876.

Between *A. B.* and *C. D.* Plaintiffs.

and

E. F. and *G. H.* Defendants.

BILL OF
EXCHANGE
AND CON-
SIDERATION.

Statement of Claim.

1. The plaintiffs are merchants, factors, and commission agents, carrying on business in London. Claim.

2. The defendants are merchants and commission agents, carrying on business at Hong Kong.

3. For several years prior to the 1875, the plaintiffs had been in the habit of consigning goods to the defendants for sale, as their agents, and the defendants had been in the habit of consigning goods to the plaintiffs for sale, as their agents; and each party always received the price of the goods sold by him for the other; and a balance was from time to time struck between the parties, and paid.

On the of, the moneys so received by the defendants for the plaintiffs, and remaining in their names, largely exceeded the moneys received by the plaintiffs for the defendants, and a balance of *l.* was accordingly due to the plaintiffs from the defendants.

4. On or about the 1875, the plaintiffs sent to the defendants a statement of the accounts between them, showing the said sum as the balance due to the plaintiffs from the defendants and the defendants agreed to the said statement of accounts as correct, and to the said sum of *l.* as the balance due by them to the plaintiffs, and agreed to pay interest on such balance if time were given to them.

5. The defendants requested the plaintiffs to give them three months time for payment of the said sum of *l.*, and the plaintiffs agreed to do so upon the defendants accepting the bills of exchange hereinafter mentioned.

6. The plaintiffs thereupon on the drew two bills of exchange upon the defendants, one for *l.* and the other for *l.*, both payable to the order of the plaintiffs three months after date, and the defendants accepted the bills.

The said bills became due on the 187, and the defendants have not paid the bills, or either of them, nor the said sum of *l.*

The plaintiffs claim :

l. and interest to the date of judgment.

The plaintiffs propose that the action should be tried in London.

Pleadings.

No. 8.

In the High Court of Justice. 187 . B. No.
Division.

Writ issued [.]

[THE "IDA."]*

Between A. B. and C. D. . . . Plaintiffs
and
E. F. and G. H. . . . Defendants.

Statement of Claim.

Claim.

[1. The "Ida" is a vessel of which no owner or part owner was, at the time of the institution of this cause, domiciled in England or Wales.]†

2. In the month of February 1873, Messrs. L. and Company, of Alexandria, caused to be shipped 6110 ardebs of cotton seed on board the said vessel, then lying in Port Said (Egypt), and the then master of the vessel received the same, to be carried from Port Said to Hull, upon the terms of three bills of lading, signed by the master, and delivered to Messrs. L. and Company.

3. The three bills of lading, being in form exactly similar to one another, were and are, so far as is material to the present case, in the words, letters, and figures following, that is to say :—

"Shipped in good order and well conditioned by L. & Co., Alexandria (Egypt) in and upon the good ship called the 'Ida,' whereof is master for the present voyage Ambrozio Chiapella, and now riding at anchor in the port of Port Said (Egypt) and bound for Hull, 6110 ardebs of cotton seed being marked and numbered as in the margin, and are to be delivered in the like good order and well-conditioned at the aforesaid port of Hull (the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever, save risk of boats so far as ships are liable thereto, excepted), unto order or to assigns paying freight for the said goods at the rate of (19s.) say 19s. sterling in full per ton of 20 cwt. delivered with 10*l.* gratuity. Other conditions as per charter-party, dated London, 4th October, 1872, with primage and average accustomed. In witness whereof the master or purser of the said ship hath affirmed to three bills of lading all of this tenor and date, the one of which three bills being accomplished the other two to stand void. Dated in Port Said (Egypt) 6th February 1873. 100 dunnage mats. Fifteen working days remain for discharging."

4. The persons constituting the firm of Messrs. L. and Company are identical with the members of the plaintiffs' firm.

5. The vessel sailed on her voyage to Hull, and duly arrived there on or about the 7th day of May 1873.

6. The cotton seed was delivered to the plaintiffs but not in a good order and condition as it was in when shipped at Port Said; but was delivered to the plaintiffs greatly damaged.

* In Admiralty action insert name of ship.

† A statement to this effect may be inserted if the action be under sect. 6 of Admiralty Act, 1861.

7. The deterioration of the cotton seed was not occasioned by any Pleadings, of the perils or causes in the bills of lading excepted.

8. By reason of the premises the plaintiffs lost a great part of the value of the said cotton seed, and were put to great expense in and about keeping, warehousing, and improving the condition of the said cotton seed, and in and about having the same surveyed.

The plaintiffs claim the following relief :—

1. l. for damages, [*and the condemnation of the said vessel and the defendant and his bail in the same];
2. Such further relief as the nature of the case requires.

[Title.]

Defence.

Defence.

Statement of :—

1. They deny the truth of the allegations contained in the sixth, seventh, and eighth articles of the said petition.

2. The deterioration, if any, to the cotton seed was occasioned by the character and quality of the cotton seed when shipped on board the “*Ida*,” and by the inherent qualities of the cotton seed, and by shipping water in a severe storm which occurred on the day of _____ in latitude _____ during the voyage, or by some or one of such causes.

[Title.]

Reply.

The plaintiffs join issue upon the statement of defence.

No. 9.

BOTTOMRY.

In the High Court of Justice.

Admiralty Division.

Writ issued [_____].

THE “*ONWARD*.”

Between *A. B.* and *C. D.* . . . Plaintiffs.

and

E. F. and *G. H.* . . . Defendants.

Statement of Claim.

1. The “*Onward*,” a ship of 933 tons register, or thereabouts, Claim. belonging to the United States of America, whilst on a voyage from Moulmein to Queenstown or Falmouth, for orders, and from thence to a port of discharge in the United Kingdom or on the Continent, between Bordeaux and Hamburg, both ports inclusive, laden with a cargo of teak timber, was compelled to put into Port Louis, in the island of Mauritius, in order to repair and refit.

2. The master of the “*Onward*,” being without funds or credit at Port Louis, and being unable to pay the expense of the said repairs, and the necessary disbursements of the said ship at Port Louis, so as to enable the said ship to resume and prosecute her voyage, and after having communicated with his owners, and with the owners and consignees of the cargo, was compelled to resort to a loan of 24,369 dollars on bottomry of the said ship, her cargo and freight,

* This may be inserted if the action be an Admiralty action *in rem*.

Pleadings

for the purpose of enabling him to pay the said expenses and disbursements, which sum Messrs. H. and Company, of Port Louis, at the request of the master by public advertisement, advanced to the said master at and after the rate of 128 dollars for every 100 dollars advanced, and accordingly the said master, by a bond of bottomry, dated the 13th of October 1870, by him duly executed in consideration of the sum of 24,369 dollars, Mauritius currency, paid to him by the said Messrs. H. and Company, bound himself and the said ship and her cargo, namely, about 940 tons of teak timber, and her freight, to pay unto Messrs. H. and Company, their assigns, or order or indorsees, the said sum of 24,369 dollars with the aforesaid maritime premium thereon, within twenty days next after the arrival of the "Onward" at her port of discharge, from the said intended voyage, the said payment to be made both in capital and interest in British sterling money, at and after the rate of 4s. for every dollar with a condition, that in case the said ship and cargo should be lost, during her voyage from Port Louis to Queens-town or Falmouth, for orders, and thence to her port of discharge in the United Kingdom or on the Continent between Bordeaux and Hamburg, both ports inclusive, then, that the said sum of 24,369 dollars, and maritime premium thereon, should not be recoverable.

3. The "Onward" subsequently proceeded on her voyage, and on the 7th of February, 1871, arrived with her cargo on board at the port of Liverpool, which was her port of discharge.

4. The bond was duly endorsed and assigned to the plaintiffs.

5. The ship has been sold by order of the Court, and the proceeds of the sale thereof have been brought into Court, and the freight has also been paid into Court.

6. The said sum of 24,369 dollars with the maritime premium thereon, still remain due to the plaintiffs. By a decree made on the 10th of May, 1871, the Court pronounced for the validity of the bond, so far as regarded the ship and freight, and condemned the proceeds of the ship and freight in the amount due on the bond. The principal and premium still remain owing to the plaintiffs, and the proceeds of the said ship and freight available for payment thereof are insufficient for such payment.

The plaintiffs claim :—

1. That the Court pronounce for the validity of the bond so far as regards the cargo.
2. That the Court condemn the defendants and their bail in so much of the amount due to the plaintiffs on the bond, for principal maritime premium, and for interest, from the time when such principal and premium ought to have been paid as the proceeds of the ship and freight available for payment of the bond shall be insufficient to satisfy, and in costs.
3. Such further relief as the nature of the case requires.

[Title.]

Defence.

Defence.

The defendants say that the—

1. Several averments in the second article of the statement contained are respectively untrue, except the averment that the bottomry bond therein mentioned was given and executed.

3. The "Onward" proceeded on the voyage in the first paragraph of the claim mentioned, under a charter party made between the defendants and the owners of the vessel, who resided at New York. And the cargo in the said paragraph mentioned belonged to the defendants, and was shipped at Moulmein, by Messrs. T. F. and Company, of Moulmein, consigned to the defendants. Pleadings.

4. When the "Onward" put into Port Louis, the master placed his ship in the hands of Messrs. H. & Company, the repairs in the second paragraph of the claim mentioned, and the repairs and disbursements in the said second article mentioned were made, directed, and expended under the orders, management, and on the credit of said Messrs. H. and Company, who at the outset contemplated the necessity of securing themselves by the hypothecation of the ship, freight, and cargo.

5. The master of the "Onward" and Messrs. H. and Company did not communicate to the said shippers of the cargo, or to the defendants who carried on business at Glasgow, as the master knew the intention of hypothecating the ship, freight, and cargo, or the circumstances which might render such hypothecation advisable or necessary, but, on the contrary, without reasonable cause or excuse, abstained from so doing, although the comparatively small value of the ship and freight to be earned, rendered it all the more important that such communication should have been made.

6. A reasonable and proper time was not allowed to elapse between the advertisements for the bottomry loan and the acceptance of Messrs. H. and Company's offer to take such loan,

[Title.]

Reply.

1. The plaintiffs say that the defendants, since the 31st day of December 1868, have been the only persons forming the firm of T. F. and Co., of Moulmein, mentioned in the third paragraph of the defence. Reply.

2. After the master of the "Onward" put into Port Louis as aforesaid, he employed Messrs. H. and Company, in the claim mentioned, as his agents, and by his directions they by letter communicated to the defendants' firms at Moulmein and Glasgow the circumstances of the ship's distress, and the estimated amount of her repairs.

3. The said Messrs. H. and Company shortly after the said ship was put into their hands at Port Louis, offered the said master, in case he should require them to do so, to make the necessary advances for the ship's repairs, and to take his draft at 90 days sight on Messrs. B. Brothers, of London, at the rate of 5 per cent. discount for the amount of the advances, together with a bottomry bond on ship, cargo, and freight as collateral security, the bond to be void should the draft be accepted. The said master, and the said Messrs. H. and Company, by letter, communicated to the owners of the "Onward" the circumstances of the said ship's distress, and the aforesaid offer of the said Messrs. H. and Company, and the said master by his letter requested the said owners to give him their directions on the subject. The said owners shortly after receiving such letters, by letter communicated with the defendants at Glasgow, and forwarded to them copies of the said lastly-mentioned letters of the said master, and of the said Messrs. H. and Co.

Pleadings.

4. The defendants' houses at Moulmein and Glasgow respectively received the letters referred to in the second paragraph of this reply in time to have communicated with the said master at Port Louis before the giving of the said bottomry bond.

5. The defendants received the said copies of letters referred to in paragraph 4 of this reply, in time for them to have communicated thereon with the said master at Port Louis before the giving of the said bond.

6. The defendants did not at any time answer the said communications of the said Messrs. H. and Company, or in any way communicate, or attempt to communicate, with the said master, or to direct him not to give, or prevent him from giving the said bottomry bond on the said cargo.

7. The said bond was duly advertised for sale, and was subsequently, and after a proper interval had elapsed, sold by auction in the usual way. There were several bidders at the sale, and the said Messrs. H. and Company were the lowest bidders in premium, and the said bond was knocked down to them. The said bond was not advertised for until the said ship was ready for sea, and up to that time the master of the said ship had expected to hear from her owners, and had hoped to be put in funds, and had not finally determined to resort to bottomry of the said ship, or her cargo, or freight.

8. Save as herein appears the plaintiffs deny the truth of the several allegations contained in the said answer.

[NOTE.—The facts stated in this reply should, in general, be introduced by amendment into the statement of claim.]

[Title.]

Rejoinder.

Rejoinder.

The defendants' join issue upon the plaintiffs' Reply.

No. 10.

CHARTER
PARTY.

187 . B. No.

In the High Court of Justice.
Division.

Writ issued 3rd August, 1876.

Between *A. B.* and *C. D.* Plaintiffs,
and
E. F. and *G. H.* Defendants.

Statement of Claim.

Claim.

1. The plaintiffs were, on the 1st August 1874, the owners of the steam ship "British Queen."

2. On the 1st August 1874, the ship being then in Calcutta, a charter party was there entered into between John Smith, the master, on behalf of himself and the owners of the said ship, of the one part, and the defendants of the other part.

3. By the said charter party it was agreed, amongst other things, that the defendant should be entitled to the whole carrying power of the said steamship for the period of four months certain, commencing from the said 1st August 1874, upon a voyage or voyages between Calcutta and Mauritius and back; that the defendants should pay for such use of the said steamship to the plaintiffs' agents at Calcutta, monthly, the sum of 1000*l.*; that the charter should terminate at Calcutta; and that if at the expiration of the said

period of four months the said steamship should be upon a voyage, then the defendants should pay *pro rata* for the hire of the ship up to her arrival at Calcutta, and the complete discharge of her cargo there. Pleadings
—

4. The "British Queen" made several voyages in pursuance of the said charter party, and the first three monthly sums of 1000*l.* each were duly paid.

5. The period of four months expired on the 1st December 1874, and at that time the steamship was on a voyage from Mauritius to Calcutta. She arrived at Calcutta on the 13th December, and the discharge of her cargo there was completed on the 16th December 1874.

6. The plaintiffs' agents at Calcutta called upon the defendants to pay to them the fourth monthly sum of 1000*l.*, and a sum of 500*l.* for the hire of the steamship from the 1st to the 16th December 1874, but the defendants have not paid any part of the said sums.

The plaintiffs claim—

The sum of 1500*l.* and interest upon 1000*l.*, part thereof, from the 1st December 1874, until judgment.

The plaintiffs propose that this action should be tried in London.

[Title.]

Statement of Defence.

1. By the charter party sued upon it was expressly provided that if any accident should happen to, or any repairs should become necessary to the engines or boilers of, the said steamship, the time occupied in repairs should be deducted from the period of the said charter, and a proportionate reduction in the charter money should be made. Defence.

2. On the repairs became necessary to the engines and boilers of the steamship, and ten days were occupied in effecting such repairs.

3. On the an accident happened to the engines of the steamship at Mauritius, and two days were occupied in effecting the repairs necessary in consequence thereof.

4. The defendants are therefore entitled to a reduction in the charter money of 400*l.*

By way of set-off and counter-claim the defendants claim as follows :— Counter-claim.

5. By the charter party it was expressly provided that the charterers should furnish funds for the steamship's necessary disbursements, except in the port of Calcutta, without any commission or interest on any sum so advanced.

6. The defendants paid for the necessary disbursements of the ship in the port of Mauritius between the and the 1874, sums amounting in all to 625*l.* 14*s.* 6*d.*

7. The charter party also contained an express warranty that the steamship was at the date thereof capable of steaming nine knots an hour on a consumption of 30 tons of coal a day, and it was further provided by the charter party that the charterers should provide coal for the use of the said steamship.

8. The steamship was at the date of the charter party only capable of steaming less than eight knots to an hour, and that only on a consumption of more than 35 tons of coal a day.

Pleadings.

9. In consequence of the matters mentioned in the last paragraph, the steamship finally arrived at Calcutta at least fifteen days later, and remained under charter at least fifteen days longer than she would otherwise have done. She was also during the whole period of the said charter at sea for a much larger number of days than she would otherwise have been, and consumed a much larger quantity of coal on each of such days than she would otherwise have done, whereby the defendants were obliged to provide for the use of the steamship much larger quantities of coal than they would otherwise have been.

The defendants claim—

1. damages in respect of the matters stated in this set-off and counter-claim.

[Title.]

Reply.

Reply

1. The plaintiffs join issue upon the second, third, and fourth paragraphs of the defendants' statement of defence.

2. With respect to the alleged set-off stated in paragraph six the plaintiffs do not admit the correctness of the amount therein stated. And all sums advanced by them for disbursements were paid or allowed to them by the plaintiffs by deducting the amount thereof from the third monthly sum of 1000*l.* paid (subject to such deduction) to the plaintiffs' agents at Calcutta by the defendant on or about the 12th November 1874.

3. With respect to the alleged breach of warranty and the alleged damages therefrom stated in the seventh, eighth, and ninth paragraphs, the plaintiffs say that the steamship was at the date of the charter party capable of steaming nine knots an hour on a consumption of 30 tons of coal a day. If the steamship did not, during the said charter, steam more than eight knots an hour, and that on a consumption of more than 35 tons a day, as alleged (which the plaintiffs do not admit), it was in consequence of the bad and unfit quality of the coals provided by the defendants for the ship's use.

[Title.]

Joinder of Issue.

Rejoinder.

The defendants join issue upon the plaintiffs reply to their set-off and counter-claim.

No. 11.

187 . B. No.

COLLISION.

In the High Court of Justice.
Admiralty Division.

Writ issued [].

THE "AMERICAN."

Between *A. B.* and *C. D.* Plaintiffs.

and

E. F. and *G. H.* Defendants.

Statement of Claim.

Claim.

1. Shortly before 8 a.m. on the 9th of December, 1874, the brigantine "Katie," of 194 tons register of which the plaintiffs were owners, manned by a crew of eight hands all told, whilst on a voyage from Dublin to St. John's, Newfoundland, in ballast, was in latitude about 46° N., and longitude 40° 42' W., by account.

2. The wind at such time was about W. by S., a strong breeze, and the weather was clear, and the "Katie" was under double reefed mainsail, reefed mainstaysail, middle staysail, lower topsail, reefed fore staysail, and jib, sailing full and by on the port tack, heading about N.W. $\frac{1}{2}$ N., and proceeding at the rate of about five knots and a half per hour.

3. At such time a steamship under steam and sail, which proved to be the screw steanship "American," was seen at the distance of three or four miles from the "Katie," broad on her port bow, and steering about E. or E. by S. The master of the "Katie," not having been able to take observations for several days, and her chronometer having run down, and the said master wishing to exchange longitudes with the "American," caused an ensign to be hoisted, and marked his longitude by account on a board which he exhibited over the port side. The "Katie" was kept full and by, and the "American" approached rapidly, and attempted to pass ahead of the "Katie," and caused immediate danger of collision, and although thereupon the helm of the "Katie" was put hard a-port and her mainsheet let go, the "American" with her stem struck the "Katie" on her port side, almost amidships, cutting her nearly in two, and the "Katie" sank almost immediately, her crew being saved by the steamer.

4. The "American" improperly neglected to keep clear of the "Katie."

5. The "American" improperly attempted to pass ahead of the "Katie."

6. The "American" improperly neglected to ease her engines, and improperly neglected to stop and reverse her engines in due time.

The plaintiff claims—

1. That it may be declared that the plaintiffs are entitled to the damage proceeded for.
2. That the bail given by the defendants be condemned in such damage, and in costs.
3. That the accounts and vouchers relating to such damage be referred to the Registrar assisted by merchants to report the amount thereof.
4. Such further and other relief as the nature of the case may require.

[Title.]

Statement of Defence.

The defendants say as follows :—

Defence.

1. The "American" is a screw steanship, of 1368 tons register, with engines of 200-horse power nominal, belonging to the port of Liverpool, and at the time of the occurrences hereinafter mentioned was manned by a crew of forty hands all told, laden with a cargo of general merchandise, and bound from Port-au-Prince in the West Indies to Liverpool.

2. About 8.5 a.m. on the 28th of November 1874, the "American" was in latitude 46° N., longitude 38° 16' W., steering E. by S. true magnetic, making under all sail and steam about 12 knots an hour, the wind being about S.W. by S. true magnetic, blowing a strong breeze and the weather hazy, when a vessel, which afterwards proved to be the brigantine "Katie," was observed on the

Pleadings.

“American’s” starboard bow about four miles distant, bearing about S.E. by E. true magnetic, close-hauled to the wind, and steering a course nearly parallel to that of the “American.”

3. The “American” kept her course, and when the “Katie” was about three miles distant her ensign was observed by those on board the “American” run up to the main, and she was seen to have altered her course, and to be bearing down towards the “American.” The “American’s” ensign was afterwards run up, and her master, supposing that the “Katie” wanted to correct her longitude, or to speak the “American,” continued on his course expecting that the “Katie,” when she had got sufficiently close to speak or show her black board over her starboard side, would luff to the wind, and pass to windward of the “American.”

4. The master of the “American” watched the “Katie” as she continued to approach the “American,” and when she had approached as near as he deemed it prudent for her to come, he waved to her to luff, and shortly afterwards, on his observing her to be attempting to cross the bows of the “American,” the helm of the latter was immediately put to starboard and engines stopped and reversed full speed; but notwithstanding, the “American” with her stem came into collision with the port side of the “Katie,” a little forward of the main rigging.

5. The “American” engines were then stopped, and when the crew of the “Katie” had got on board of the “American,” the latter’s engines were reversed to get her clear of the “Katie,” which sunk under the “American’s” bows.

6. The “Katie” improperly approached too close to the “American.”

7. Those on board the “Katie” improperly neglected to luff, and to pass to windward of the “American.”

8. Those on board the “Katie” improperly attempted to cross the bows of the “American.”

9. Those on board the “Katie” improperly ported her helm before the said collision.

10. Those on board the “Katie” improperly neglected to starboard her helm before the said collision.

[Title.]

Reply.

Reply.

The plaintiffs join issue upon the defendants’ statement of defence.

No. 12.

187 . B. No.

EQUIPMENT
OF SHIP.In the High Court of Justice.
Admiralty Division.

Writ issued [].

THE “TWO ELLENS.”

Between *A. B.* and *C. D.* . . . Plaintiffs,
and
E. F. . . . Defendant.

Statement of Claim.

Claim.

1. The said vessel was and is a British colonial vessel, belonging

to the Port of Digby in Nova Scotia, of which no owner or part owner was at the time of this action or is domiciled in England or Wales. Pleadings.

2. At the time of the commencement of this action the said vessel was under arrest of this Court.

3. About the month of February 1868, the said vessel was lying in the Port of London, in need of repairs, and of being equipped and supplied with certain other necessaries.

4. By the order of Messrs. K. L., who were duly authorised, the plaintiffs equipped and repaired the said vessel as she needed, and provided the vessel with necessaries, and there is now due to the plaintiffs for such necessary repairing and equipping, and other necessaries, the sum of 305*l.* 3*s.*, together with interest thereon from the 19th day of February 1868.

The plaintiffs claim—

1. Judgment for the said sum of 305*l.* 3*s.*, with such interest thereon as aforesaid until judgment.
2. The condemnation of the ship and the defendant and his bail therein and in the costs of this suit.
3. Such further relief as the nature of the case requires.

[Title].

Statement of Defence.

1. By an instrument of mortgage, in the form and recorded as prescribed by the Merchant Shipping Act, 1854, bearing date the 9th of March 1867, and executed by C. M., blacksmith, D. F., master mariner, and W. H., farmer, all of Weymouth, in the county of Digby, in Nova Scotia, the registered owners of 64-64ths parts or shares in the vessel, the said C. M., D. F., and W. H. mortgaged 64-64ths parts or shares in the vessel, of which the said D. F. was also master, to G. T., of Nova Scotia, in consideration of the sum of 5000 dollars advanced by him to the said owners, and for the purpose of securing the repayment by them to him of the said sum with interest thereon. Defence.

2. By an instrument of transfer, dated the 16th of July 1868, in the form prescribed by the said Act, and executed by G. T., in consideration of the sum of 5000 dollars to G. T., paid by the defendant, G. T. transferred to the defendant the mortgage security.

3. The said sum of 5000 dollars, with interest thereon, still remains due on the said security.

4. The vessel was not under the arrest of this Court at the time of the commencement of this action.

5. The vessel did not need to be equipped or repaired as in the fourth paragraph of the plaintiffs' claim mentioned, and she did not at the time of the supply of the articles referred to in the said fourth paragraph as "necessaries" stand in need of such articles. On the contrary, the said vessel could have gone to sea and proceeded on and presented her voyage without such equipments, repairs, and articles referred to as aforesaid, and such equipments, repairs, and other articles were done and effected and supplied for the purpose of reclassing the said vessel, and not for any other purpose; and the claim of the plaintiffs is not a claim for necessaries within the meaning of the Admiralty Court Act, 1861, s. 5.

Pleadings.

6. The alleged necessities were not supplied on the credit of the said vessel, but upon the personal credit of J. B., who was the broker for the vessel, and upon the agreement that the plaintiffs were not to have recourse to the vessel.

7. The defendant did not, nor did G. T., in any way, order, authorise, or become liable for, and neither of them is in any way liable in respect of the said alleged supplies or any part thereof, and the said vessel was at the time of the commencement of this action and she still is of a less value than the amount which, irrespective of the sums referred to in the next article of this answer, is due to the defendant on the said mortgage security.

8. The defendant, in order to save the vessel from being sold by this Court at the instance of certain of her mariners having liens on the said vessel for their wages, has been compelled to pay the said wages, and he claims, if necessary, to be entitled to stand in the place of such mariners, or to add the amounts so paid by him for wages to the amount secured by the said mortgage, and to have priority in respect thereof over the claim of the plaintiffs.

[Title.]

Reply.

Reply.

1. The plaintiffs admit that 64-64th shares in the said ship, the "Two Ellens," were on or about the 9th day of March 1867, mortgaged by the said C. M., D. F., and W. H., all of Weymouth, in the county of Digby, Nova Scotia, to the said G. T.

2. Save as aforementioned, all the several averments in the said answer contained are respectively untrue.

3. If there was or is any such instrument of transfer as is mentioned in the second article of the said answer, the same has never been registered according to the provisions of the Merchant Shipping Act, 1854.

4. The said G. T. has never been domiciled in or resided in the United Kingdom, and is now resident in Nova Scotia, and the registered owners of the said vessel in the first paragraph of the said defence mentioned were always and are domiciled in Nova Scotia, and resident out of the United Kingdom.

[Title].

Rejoinder.

Rejoinder.

The defendant joins issue upon the third and fourth paragraphs of the Reply.

No. 13.

187 . B. No.

FALSE
IMPRISON-
MENT.In the High Court of Justice.
Division.

Writ issued 3rd August, 1876.

Between *A. B.* Plaintiff,
and
E. F. Defendant.

Statement of Claim.

1. The plaintiff is a journeyman painter. The defendant is a builder, having his building yard, and carrying on business at and for six months before and up to the 22nd August 187 the plaintiff was in the defendant's employment as a journeyman painter.

2. On the said 22nd August 187 , the plaintiff came to work as usual in the defendant's yard, at about six o'clock in the morning. Pleadings.

3. A few minutes after the plaintiff had so come to work the defendant's foreman X. Y., who was then in the yard, called the plaintiff to him, and accused the plaintiff of having on the previous day stolen a quantity of paint, the property of the defendant, from the yard. The plaintiff denied the charge, but X. Y. gave the plaintiff into the custody of a constable, whom he had previously sent for, upon a charge of stealing paint.

4. The defendant was present at the time when the plaintiff was given into custody, and authorised and assented to his being so given into custody; and in any case X. Y., in giving him into custody, was acting within the scope and in the course of his employment as the defendant's foreman, and for the purposes of the defendant's business.

5. The plaintiff upon being so given into custody, was taken by the said constable a considerable distance through various streets, on foot, to the police station, and he was there detained in a cell till late in the same afternoon, when he was taken to the police court, and the charge against him was heard before the magistrate then sitting there, and was dismissed.

6. In consequence of being so given into custody, the plaintiff suffered annoyance and disgrace, and loss of time and wages, and loss of credit and reputation, and was thereby unable to obtain any employment or earn any wages for three months.

The plaintiff claims 7. damages.

The plaintiff proposes that this action should be tried in Middlesex.

[Title.]

Statement of Defence.

1. The defendant denies that he was present at the time when the plaintiff was given into custody, or that he in any way authorised or assented to his being given into custody. And the said X. Y., in giving the plaintiff into custody, did not act within the scope or in the course of his employment as the defendant's foreman, or for the purposes of the defendant's business. Defence

2. At some time about five or six o'clock on the evening before the plaintiff was given into custody, a large quantity of paint had been feloniously stolen by some person or persons from a shed upon the defendant's yard and premises.

3. At about 5.30 o'clock on the evening of the plaintiff, who had left off work about half an hour previously, was seen coming out of the shed when no one else was in it, although his work lay in a distant part of the yard from, and he had no business in or near, the shed. He was then seen to go to the back of a stack of timber in another part of the yard. Shortly afterwards the paint was found to have been stolen, and it was found concealed at the back of the stack of timber behind which the plaintiff had been seen to go.

4. On the following morning, before the plaintiff was given into custody, he was asked by X. Y. what he had been in the shed and behind the stack of timber for, and he denied having been in either place. X. Y. had reasonable and probable cause for suspecting, and did suspect that the plaintiff was the person who had stolen the paint, and thereupon gave him into custody.

Pleadings.

[Title.]

Reply.

Reply.

The plaintiff joins issue upon the defendant's statement of defence.

No. 14.

1876. W. No. 672.

FORE-
CLOSURE.In the High Court of Justice,
Chancery Division.[*Name of Judge.*]

Writ issued [. . .].

Between R. W. Plaintiff,

and

O. S. and J. B. Defendants.

Statement of Claim.

Claim.

1. By an indenture dated the 25th of March 1867, made between the defendant O. S. of the one part, and the plaintiff of the other part, the defendant O. S., in consideration of the sum of 10,000*l.* paid to him by the plaintiff, conveyed to the plaintiff and his heirs a farm containing 398 acres, situate in the parish of B., in the county of D., with all the coal mines, seams of coal, and other mines and minerals in and under the same, subject to a proviso for redemption of the same premises on payment by the defendant O. S., his heirs, executors, administrators, or assigns, to the Plaintiff, his executors, administrators, or assigns, of the sum of 10,000*l.*, with interest for the same in the meantime at the rate of 4*l.* per cent. per annum, on the 25th day of September then next.

2. By an indenture dated the 1st day of April 1867, made between the defendant O. S. of the one part, and the defendant J. B. of the other part, the defendant O. S. conveyed to the defendant J. B. and his heirs the hereditaments comprised in the herein-before stated security of the plaintiff, or some parts thereof, subject to the plaintiff's said security, and subject to a proviso for redemption of the same premises on payment by the defendant O. S., his heirs, executors, administrators, or assigns, to the defendant J. B., his executors, administrators, or assigns, of the sum of 15,000*l.*, with interest for the same in the meantime at the rate of 5*l.* per cent. per annum.

3. The whole of the said sum of 10,000*l.*, with an arrear of interest thereon, remains due to the plaintiff on his said security.

The plaintiff claims as follows:—

1. That an account may be taken of what is due to the plaintiff for principal money and interest on his said security, and that the defendants may be decreed to pay to the plaintiff what shall be found due to him on taking such account, together with his costs of this action, by a day to be appointed by the court, the plaintiff being ready and willing, and hereby offering, upon being paid his principal money, interest, and costs, at such appointed time, to convey the said mortgaged premises as the court shall direct.
2. That in default of such payment the defendants may be foreclosed of the equity of redemption in the mortgaged premises.
3. Such further or other relief as the nature of the case may require.

1876. W. No. 672. Pleadings.

In the High Court of Justice,
Chancery Division.

[Name of Judge.]

Between R. W. Plaintiff,
and
O. S. and J. B. Defendants,
(by original action)
And between the said O. S. Plaintiff,
and
The said R. W. and J. B. and J. W. . . . Defendants,
(by counter-claim)

The Defence and Counter-claim of the above-named O. S.

1. This defendant does not admit that the contents of the indenture of the 25th day of March 1867, in the plaintiff's statement of complaint mentioned, are correctly stated therein. Defence.

2. The indenture of the 1st day of April 1867, in the statement of claim mentioned, was not a security for the sum of 15,000*l.* and interest at 5*l.* per cent. per annum, but for the sum of 14,000*l.* only, with interest at the rate of 4*l.* 10*s.* per cent. per annum.

3. This defendant submits that under the circumstances in his counterclaim mentioned, the said indentures of the 25th day of March 1867, and the 1st day of April 1867, did not create any effectual security upon the mines and minerals in and under the lands in the same indentures comprised, and that the same mines and minerals ought to be treated as excepted out of the said securities.

And by way of counter-claim this defendant states as follows:— Counter-claim.

1. At the time of the execution of the indenture next hereinafter stated, J. C. A. was seised in fee simple in possession of the lands described in the said indentures, and the mines and minerals in and under the same.
2. By indenture dated the 24th of March 1860, made between the said J. C. A. of the first part, E. his wife, then E. S., spinster, of the second part, and this defendant and the above-named J. W. of the third part, being a settlement made in contemplation of the marriage, shortly after solemnized, between the said J. C. A. and his said wife, the said J. C. A. granted to this defendant and the said J. W., and their heirs, all the coal mines, beds of coal, and other the mines and minerals under the said lands, with such powers and privileges as in the now-stating indenture mentioned, for the purpose of winning, working, and getting the same mines and minerals, to hold the same premises to this defendant and the said J. W. and their heirs to the use of the said J. C. A., his heirs and assigns, till the solemnization of the said marriage, and after the solemnization thereof to the use of this defendant and the said J. W., their executors and administrators, for the term of 500 years, from the day of the date of the now stating indenture, upon the trusts therein mentioned, being trusts for the benefit of the said J. C. A., and his wife and the children of their marriage, and from and after the expiration or other determination of the said term of 500 years, and in the meantime subject thereto, to the use of the said J. C. A., his heirs and assigns for ever.

Pleadings.

3. By indenture dated the 12th of May 1860, made between the said J. C. A. of the one part, and W. N. of the other part, the said J. C. A. granted to the said W. N. and his heirs the said lands, except the coal mines, beds of coal, and other mines and minerals thereunder, to hold the same premises unto and to the use of the said W. N., his heirs and assigns for ever, by way of mortgage, for securing the payment to the said W. N., his executors, administrators, or assigns, of the sum of 26,000*l.* with interest as therein mentioned.
4. On the 14th of January 1864, the said J. C. A. was adjudicated a bankrupt, and shortly afterwards J. L. was appointed creditor's assignee of his estate.
5. Some time after the said bankruptcy, the said W. N., under a power of sale in his said mortgage deed, contracted with this defendant for the absolute sale to this defendant of the property comprised in his said security for an estate in fee simple in possession, free from incumbrances, for the sum of 26,000*l.*, and the said J. L., as such assignee as aforesaid, agreed to join in the conveyance to this defendant for the purpose of signifying his assent to such sale.
6. By indenture dated the 1st of September 1866, made between the said W. N. of the first part, the said J. L. of the second part, the said J. C. A. of the third part, and this defendant of the fourth part, reciting the said agreement for sale, and reciting that the said J. L., being satisfied that the said sum of 26,000*l.* was a proper price, had, with the sanction of the Court of Bankruptcy, agreed to confirm the said sale, it was witnessed that in consideration of the sum of 26,000*l.*, with the privity and approbation of the said J. L., paid by this defendant to the said W. N., he the said W. N. granted, and the said J. C. A. ratified and confirmed to this defendant and his heirs, all the hereditaments comprised in the said security of the 12th day of May 1860, with their rights, members and appurtenances, and all the estate, right, title, and interest of them, the said W. M. and J. C. A. therein to hold the same premises unto and to the use of this defendant, his heirs and assigns for ever.
7. The sale to this defendant was not intended to include anything not included in the security of the 12th of May 1860, and the said J. L. only concurred therein to signify his approval of the said sale, and did not purport to convey any estate vested in him; and the lastly herein-before stated indenture did not vest in this defendant any estate in the said mines and minerals.
8. The plaintiff and the defendant J. B. respectively had before they advanced to this defendant the moneys lent by them on their securities in the plaintiff's claim mentioned, full notice that the mines and minerals under the said lands did not belong to this defendant. This fact appeared on the abstracts of title delivered to them before the preparation of their said securities. A valuation of the property made by a surveyor was furnished to them respectively on behalf of this defendant before they agreed to advance their money on their said securities; but although the said lands are in a mineral district the mines and minerals were omitted from such valuation, and they respectively knew at the time of taking

their said securities that the same did not include any interest Pleadings.
in the mines and minerals. —

9. At the time when the securities of the plaintiff and the defendant J. B. were respectively executed, the plaintiff and the defendant J. B. respectively had notice of the said indenture of settlement of the 24th day of March 1860.
10. At the time when the plaintiff's security was executed, the mines and minerals under the said lands, with such powers and privileges as aforesaid, were vested in this defendant and the said J. W. for the residue of the said term of 500 years, and subject to the said term, the inheritance in the same mines, minerals, powers and privileges was vested in the said J. L. as such assignee as aforesaid.
11. The said security to the plaintiff was by mistake framed so as to purport to include the mines and minerals under the said lands, and by virtue thereof the legal estate in moiety of the said mines and minerals became and now is vested in the plaintiff for residue of the said term of 500 years.

The defendant O. S. claims as follows :

1. That it may be declared that neither the plaintiff nor the defendant J. B. has any charge or lien upon that one undivided moiety, which in manner aforesaid became vested in the plaintiff for the residue of the said term of 500 years, of and in the mines and minerals in and under the lands mentioned in the plaintiff's said security.
2. That it may be declared that the said mines and minerals, rights, and privileges which by the said indenture of settlement were vested in the defendant O. S. and the said J. W. for the said term of 500 years, upon trust as therein mentioned, ought to be so conveyed and assured as that the same may become vested in the defendant O. S. and the said J. W. for all the residue of the said term upon the trusts of the said settlement.
3. That the said R. W. and J. W. may be decreed to execute all such assurances as may be necessary for giving effect to the declaration secondly herein-before prayed.
4. To have such further or other relief as the nature of the case may require.

1876. W. No. 672.

In the High Court of Justice,
Chancery Division.

[Name of Judge.]

Between R. W. Plaintiff,

and
O. S. and J. B. Defendants,

(by original action.)

And between the said O. S. Plaintiff,

and
The said R. W., and J. B., and J. W. Defendants,

(by counter-claim).

Pleadings.

The Reply of the Plaintiff R. W.

Reply.

1. The plaintiff joins issue with the defendants upon their several defences, and in reply to the statements alleged by the defendant O. S., by way of counter-claim, the plaintiff says as follows :

1. The plaintiff does not admit the execution of any such indenture as is stated in the said counter-claim to bear date the 24th of March 1860.
2. The plaintiff does not admit that the indenture of the 12th of May 1860, is stated correctly in the statement of claim.
3. When the defendant O. S., in the year 1866, applied to the plaintiff to advance him the sum of 10,000*l.*, he offered to the plaintiff as a security the lands which were afterwards comprised in the indenture of the 25th of March 1867, including the mines and minerals which he now alleges were not to form part of the security, and the plaintiff agreed to lend the said sum upon the security of the said lands, including such mines and minerals. During the negociations for the said loan a valuation of the property to be included in the mortgage was delivered to the plaintiff on behalf of the said defendant. Such valuation included the mines and minerals ; and the plaintiff consented to make the loan on the faith of such valuation. The plaintiff did not know when he took his security that it did not include any interest in the said mines and minerals : on the contrary, he believed that the entirety of such mines and minerals was to be included therein.
4. The plaintiff does not admit the contents of the indenture of the 1st of September 1866, to be as alleged, or that it was so framed as not to include the said mines and minerals, or that it was not intended to include anything not included in the security of the 12th of May 1860, or that J. L. in the counter-claim named only concurred therein to signify his approval of the said sale, and did not purport to convey any estate vested in him.
5. Save so far as the plaintiff's solicitor may have had notice by means of the abstract of title that the mines and minerals under the said lands did not belong to the defendant O. S., the plaintiff had not any notice thereof, and he does not admit that it appeared from the abstract of title that such was the case. The mines were not omitted from any valuation delivered to the plaintiff as mentioned in the counter-claim.
6. The plaintiff admits that when he took his security he was aware that there was indorsed on the deed by which the said lands were conveyed by J. C. A. in the counter-claim named a notice of a settlement of 24th March 1860, but he had no further or other notice thereof, and though his solicitor inquired after such settlement none was ever produced.
7. The plaintiff submits that if it shall appear that no further interest in the said mines and minerals was conveyed to him by his said security than one undivided moiety of a term of 500 years therein, as alleged by the said counter-claim, such interest is effectually included in the plaintiff's said security, and that he is entitled to foreclose the same.

No. 15.

187 . B. No.

Pleadings.

In the High Court of Justice.
Division.

FRAUD.

Writ issued 3rd August 1876.

Between A. B. Plaintiff,
and
E. F. Defendant.

Statement of Claim.

1. In or about March 1875, the defendant caused to be inserted in the Daily Telegraph Newspaper an advertisement, in which he offered for sale the lease, fixtures, fittings, goodwill, and stock-in-trade of a baker's shop and business, and described the same as an increasing business, and doing 12 sacks a week. The advertisement directed application for particulars to be made to X. Y. Claim.

2. The plaintiff having seen the advertisement applied to X. Y., who placed him in communication with the defendant, and negotiations ensued between the plaintiff and the defendant for the sale to the plaintiff of the defendant's bakery at with the lease, fixtures, fittings, stock-in-trade, and goodwill.

3. In the course of these negotiations the defendant repeatedly stated to the plaintiff that the business was a steadily increasing business, and that it was a business of more than 12 sacks a week.

4. On the 5th of April 1875, the plaintiff, believing the said statements of the defendant to be true, agreed to purchase the said premises from the defendant for 500*l.*, and paid to him a deposit of 200*l.* in respect of the purchase.

5. On the 15th April the purchase was completed, an assignment of the lease executed, and the balance of the purchase money paid. On the same day the plaintiff entered into possession.

6. The plaintiff soon afterwards discovered that at the time of the negotiations for the said purchase by him and of the said agreement, and of the completion thereof, the said business was and had long been a declining business; and at each of those times, and for a long time before, it had never been a business of more than 8 sacks a week. And the said premises were not of the value of 500*l.*, or any saleable value whatever.

7. The defendant made the false representations herein-before mentioned well knowing them to be false, and fraudulently, with the intention of inducing the plaintiff to make the said purchase on the faith of them.

The plaintiff claims *l.* damages.

[Title.]

Statement of Defence.

1. The defendant says that at the time when he made the representations mentioned in the third paragraph of the statement of claim and throughout the whole of the transactions between the plaintiff and defendant, and down to the completion of the purchase and the relinquishment by the defendant of the said shop and business to the plaintiff, the said business was an increasing business, and was a business of over 12 sacks a week. And the defendant denies the allegations of the sixth paragraph of the statement of claim. Defence.

Pleadings.

2. The defendant repeatedly during the negotiations told the plaintiff that he must not act upon any statement or representation of his, but must ascertain for himself the extent and value of the said business. And the defendant handed to the plaintiff for this purpose the whole of his books, showing fully and truthfully all the details of the said business, and from which the nature, extent, and value thereof could be fully seen, and those books were examined for that purpose by the plaintiff, and by an accountant on his behalf. And the plaintiff made the purchase in reliance upon his own judgment, and the result of his own inquiries and investigations, and not upon any statement or representation whatever of the defendant.

[Title.]

Reply.

Reply.

The plaintiff joins issue upon the defendant's statement of defence.

No. 16.

187 . B. No.

GUARANTEE In the High Court of Justice.
Division.

Writ issued 3rd August 1876.

Between *A. B.* and *C. D.* Plaintiffs,

and

E. F. and *G. H.* Defendants.*Statement of Claim.*

Claim.

1. The plaintiffs are brewers, carrying on their business at under the firm of *X. Y. & Co.*

2. In the month of March 1872, *M. N.* was desirous of entering into the employment of the plaintiffs as a traveller and collector, and it was agreed between the plaintiffs and defendants and *M. N.*, that the plaintiffs should employ *M. N.* upon the defendant entering into the guarantee herein-after mentioned.

3. An agreement in writing was accordingly made and entered into, on or about the 30th March 1872, between the plaintiffs and the defendant, whereby in consideration that the plaintiffs would employ *M. N.* as their collector the defendant agreed that he would be answerable for the due accounting by *M. N.* to the plaintiffs for and the due payment over by him to the plaintiffs of all moneys which he should receive on their behalf as their collector.

4. The plaintiffs employed *M. N.* as their collector accordingly, and he entered upon the duties of such employment, and continued therein down to the 31st of December 1873.

5. At various times between the 29th of September and the 25th of December 1873, *M. N.* received on behalf of the plaintiffs and as their collector sums of money from debtors of the plaintiffs amounting in the whole to the sum of 950*l.*: and of this amount *M. N.* neglected to account for or pay over to the plaintiffs sums amounting in the whole to 227*l.*, and appropriated the last-mentioned sums to his own use.

6. The defendant has not paid the last-mentioned sums, or any part thereof to the plaintiffs.

The plaintiffs' claim:—

No. 17.

187 . B. No.

Pleadings.

In the High Court of Justice,
Probate Division.Between *A. B.* Plaintiff,and
C. D. Defendant.INTEREST
SUIT
(PROBATE).*Statement of Claim.*

1. *M. N.*, late of No. High Street, Putney, in the county of Surrey, grocer, deceased, died on or about the day of , at No. 1, High Street, Putney, aforesaid, a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece.

2. The plaintiff is the cousin-german, and one of the next of kin of the deceased.

The plaintiff claims:—

That the Court decree to him a grant of letters of administration of the personal estate and effects of the said deceased as his lawful cousin-german, and one of his next of kin.

[Title.]

Defence.

1. The defendant admits that *M. N.* died a widower, without child, parent, brother or sister, uncle or aunt, or niece, but he denies that he died without nephew. Defence.

2. The deceased had a brother named *G. B.*, who died in his lifetime.

3. *G. B.* was married to *E. H.* in the parish church of in the county of on the day of and had issue of such marriage, the defendant, who was born in the month of and is the nephew and next of kin of the deceased.

The defendant therefore claims:—

That the Court pronounce that he is the nephew and next of kin of the deceased, and as such entitled to a grant of letters of administration of the personal estate and effects of the deceased.

[Title.]

Reply.

1. The plaintiff denies that *G. B.* was married to *E. H.* Reply.

2. He also denies that the defendant is the issue of such marriage.

No. 18.

In the High Court of Justice,
Division.

187 . B. No.

LANDLORD
AND
TENANT.

Writ issued 3rd August, 1876.

Between *A. B.* Plaintiff,and
C. D. Defendant.*Statement of Claim.*

1. On the day of the plaintiff, by deed, let to the defendant a house and premises No. 52, Street, in the City of London, for a term of 21 years from the day of at the yearly rent of 120*l.*, payable quarterly. Claim.

Pleadings.

2. By the said deed the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said deed also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved whether demanded or not should be in arrear for 21 days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the 24th June 187 a quarter's rent became due, and on the 29th of September 187 another quarter's rent became due; on the 21st October 187 both had been in arrear for 21 days, and both are still due.

5. On the same 21st October 187 the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value.

The plaintiff claims :—

1. Possession of the said house and premises.

2. l. for arrears of rent.

3. l. damages for the defendant's breach of his covenant to repair.

4. l. for the occupation of the house and premises from the 29th of September 187 to the day of recovering possession.

The plaintiff proposes that this action should be tried in London.

No. 19.

187 . No.

NECES-
SARIES FOR
SHIP.

In the High Court of Justice,
Admiralty Division.

Writ issued [. . .] .

THE "ENTERPRISE."

Between A. B. and C. D. Plaintiffs,

and

E. F. and G. H. Defendants.

Statement of Claim.

Claim.

1. The plaintiffs were at the time herein-after stated and are engineers and ironfounders, carrying on business at Liverpool in the county of Lancaster.

2. In the month of January 1872, whilst the above-named steamship "Enterprise," belonging to the port of London, was in the port of Liverpool, the plaintiffs, having received orders from the master in that behalf, executed certain necessary work to her and supplied her with certain necessary stores and materials, and caused her to be supplied upon their credit with certain necessary work, labour, materials, and necessaries, and thereby supplied the said ship with necessaries within the meaning of the fifth section of the Admiralty Court Act, 1861.

3. There is due to the plaintiffs in respect of such supply of necessaries to the said ship the sum of 577l. 2s. 6d., and the plaintiffs cannot obtain payment thereof without the assistance of the Court.

The plaintiffs claim :—

Pleadings.

1. Judgment pronouncing for the claim of the plaintiffs.
2. The condemnation of the defendants and their bail therein, with costs.
3. A reference, if necessary, of the claim of the plaintiffs to the registrar, assisted by assessors, to report the amount thereof.
4. Such further relief as the nature of the case requires.

[Title.]

Defence.

Defence.

1. The defendants deny the allegations contained in the third paragraph of the statement of claim.

2. The defendants admit that the plaintiffs executed certain work to the said ship, and supplied her with certain materials, but they say, that a portion of the work so executed was executed badly and insufficiently, and of the materials so supplied, some were bad and insufficient, and a portion of the work in the claim mentioned was done in and about altering and endeavouring to make good such bad and insufficient work and materials. The defendant has paid in respect of the work and materials in the claim mentioned the sum of 356*l.* 17*s.* 9*d.*, and the said sum is sufficient to satisfy the claims of the plaintiffs.

3. The defendants deny the allegations contained in the second paragraph of the claim, so far as they relate to any claim beyond the said sum of 356*l.* 17*s.* 9*d.*, and say that if the plaintiffs did execute any work or did supply any materials other than the work and materials mentioned in the second paragraph of this defence, such work was not necessary work, and such materials were not necessary materials, within the meaning of the fifth section of the Admiralty Court Act, 1861, and were not supplied in such circumstances as to render the defendants liable to pay for the same.

[Title.]

Reply.

1. The plaintiffs join issue upon the statement of defence.

Reply.

No. 20.

In the High Court of Justice,
Division.

187 B. No.

NEGLIGENCE

Writ issued 3rd August 1876.

Between *A. B.* Plaintiff.

and

E. F. Defendant.

Statement of Claim.

1. The plaintiff is a shoemaker, carrying on business at
The defendant is a soap and candle manufacturer, of

Claim.

2. On the 23rd May 1875, the plaintiff was walking eastward along the south side of Fleet Street, in the city of London, at about three o'clock in the afternoon. He was obliged to cross Street, which is a street running into Fleet Street at right angles on the south side. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a two-horse van of the defendant's, under the charge and control of the defendant's servants, was negligently, suddenly, and without any

Pleadings. warning, turned at a rapid and dangerous pace out of Fleet Street into Street. The pole of the van struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims l. damages.

[Title.]

Statement of Defence.

Defence. 1. The defendant denies that the van was the defendant's van, or that it was under the charge or control of the defendant's servant. The van belonging to Mr. John Smith, of , a carman and contractor employed by the defendant to carry and deliver goods for him ; and the persons under whose charge and control the said van was were the servants of the said Mr. John Smith.

2. The defendant does not admit that the van was turned out of Fleet Street, either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says, that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the van approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the statement of claim.

[Title.]

Reply.

Reply. The plaintiff joins issue upon the defendant's statement of defence.

No. 21.

POSSESSION OF SHIP.

In the High Court of Justice. Admiralty Division.

187 . B. No.

Writ issued []
THE "LADY OF THE LAKE."

Between A. B. Plaintiff,
and
E. F. Defendant.

Statement of Claim.

Claim. 1. On or about the 15th of July 1868, an agreement was entered into between the plaintiff and J. D., who was then the sole owner of the abovenamed barque "Lady of the Lake," whereby J. D. agreed to sell, and the plaintiff agreed to purchase, 32-64th parts or shares of the vessel for the sum of 500l. ; payment 300l. in cash, and the remainder by purchaser's acceptances at three and six months date, and it was thereby agreed that the plaintiff was to be commander of the vessel.

2. The plaintiff accordingly paid to J. D. the sum of 300l., and gave him his (the plaintiff's) acceptances at three and six months

date for the residue of the said purchase money, and *J. D.* by bill of sale transferred 32-64th parts or shares in the vessel of the plaintiff, which bill of sale was duly registered on the 18th of July 1868; the plaintiff has since been and still is the registered owner of such 32-64th share. Pleadings.

3. The vessel then sailed under the plaintiff's command on a voyage from Sunderland to the Brazils and other ports, and then on a homeward voyage to Liverpool, where she arrived on the 18th of June 1869, and having there discharged her homeward cargo she sailed thence under the plaintiff's command with a cargo to the Tyne, and thence to Sunderland, at which port she arrived on the 9th of August 1869.

4. The plaintiff then made several ineffectual applications to *J. D.*, with a view to obtaining another charter for the said vessel, and after she had been lying idle for a considerable time, the plaintiff on or about the 16th of September 1869, obtained an advantageous charter for her to proceed to Barcelona with a cargo of coals, and with a view to enable her to execute such charter the plaintiff paid the dock dues, and moved the vessel into a slipway in order that her bottom might be cleaned, but on or about the 17th of September, whilst the vessel was on shore adjoining the slipway the defendant, to whom the said *J. D.* had in the meantime transferred his 32-64th parts, forcibly took the vessel out of the possession, of the plaintiff, and refused and still refuses to allow the plaintiff, to take the vessel on her said voyage to Barcelona, and by reason thereof heavy loss is being occasioned to the plaintiff.

The plaintiff claims—

1. Judgment giving possession of the vessel "Lady of the Lake" to the plaintiff.
2. The condemnation of the defendant in cost of suit, and in all losses and damages occasioned by the defendant to the plaintiff :
3. Such further relief as the nature of the case requires.

[Title.]

Defence.

1. The defendant says that the acceptances in the second paragraph of the claim mentioned were respectively dishonoured by the plaintiff, and have never yet been paid by him. Defence.

2. It was agreed between the plaintiff and *J. D.*, that *J. D.* should act, and he has since always acted, as ship's husband of the "Lady of the Lake."

3. On the 31st of August 1869, *J. D.* sold to the defendant, for the sum of 400*l.*, and by bill of sale duly executed, transferred to him his 32-64th shares, and the bill of sale was duly registered on the 14th of September following.

4. After the "Lady of the Lake" had arrived at Sunderland, and after the defendant had purchased from *J. D.* his 32-64th shares of the "Lady of the Lake," the defendant placed the vessel in the custody and possession of a shipkeeper. The plaintiff, however, unlawfully removed her from such possession, and thereupon the defendant had the vessel taken into the South Dock of the harbour at Sunderland, with orders that she should be kept there. What the

Pleadings.
—

defendant did, as in this article mentioned, he did with the consent and full approval of *J. D.*

5. At the time of the sale of the "Lady of the Lake" by *J. D.* to the defendant as afore-mentioned, there was and there still is due from the plaintiff, as part owner of the "Lady of the Lake," to *J. D.*, as part owner and ship's husband, a sum of money exceeding 300*l.* in respect of the vessel and her voyages over and above the amount of the unpaid acceptances.

6. Save as herein appears, the averments in the fourth paragraph of the claim contained are untrue, and if the charter-party mentioned in that paragraph was obtained by the plaintiff as alleged, which the defendant does not admit, it was obtained by him without the authority, consent, or knowledge of *J. D.* or the defendant.

7. Before the defendant took possession of the vessel as afore-mentioned, the plaintiff ceased to be master of her, with the consent of *J. D.* or the defendant.

8. *J. D.* has instituted an action against the said vessel in order to have the accounts taken between him and the plaintiff, and to enforce payment of the money due from the plaintiff to him.

[Title.]

Reply.

1. The plaintiff says in reply to the first paragraph of the defence that the bills therein mentioned were dishonoured by the plaintiff because *J. D.* was indebted to the plaintiff in a large amount for his wages as master, and for his share of the earnings of the "Lady of the Lake," and refused payment thereof.

2. *J. D.* did not place the vessel in the exclusive custody or possession of a shipkeeper as in the fifth paragraph of the defence stated or implied. On the contrary, the vessel continued in the custody and possession of the plaintiff, who still holds her register. A man was sent on board the vessel by *J. D.* to look after *J. D.*'s share in the said vessel while she was in dock, but he did not dispossess the said plaintiff or take exclusive possession of the vessel, and the plaintiff was not dispossessed of the vessel until on or about the 17th of September last.

3. Except as herein-before appears the plaintiff joins issue upon the defendant's statement of defence.

[Title.]

Rejoinder.

Rejoinder.

The defendant joins issue upon the first and second paragraphs of the Reply.

—
No. 22.

187 . B. No.

PROMISSORY NOTE. In the High Court of Justice.
Division.

Writ issued 3rd August 1876.

Between *A. B.* Plaintiff,

and

E. F. Defendant.

Statement of Claim.

1. The defendant on the _____ day of _____ made his Pleadings.
 promissory note, whereby he promised to pay to the plaintiff or his Claim.
 order l. three months after date.

2. The note became due on the _____ day of _____ 1874,
 and the defendant has not paid it.

The plaintiff claims:—

The amount of the note and interest thereon to judgment.

The plaintiff proposes that this action should be tried in the
 county of _____

[Title.]

Statement of Defence.

Defence.

1. The defendant made the note sued upon under the following
 circumstances:—The plaintiff and defendant had for some years
 been in partnership as coal merchants, and it had been agreed
 between them that they should dissolve partnership, that the
 plaintiff should retire from the business, that the defendant should
 take over the whole of the partnership assets and liabilities, and
 should pay the plaintiff the value of his share in the assets after
 deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership
 books, and inquire into the state of the partnership assets and
 liabilities; and he did accordingly examine the books, and make
 the said inquiries, and he thereupon represented to the defen-
 dant that the assets of the firm exceeded 10,000*l.*, and that the
 liabilities of the firm were under 3,000*l.*, whereas the fact was that
 the assets of the firm were less than 5,000*l.*, and the liabilities of the
 firm largely exceeded the assets.

3. The misrepresentations mentioned in the last paragraph
 induced the defendant to make the note now sued on, and there
 never was any other consideration for the making of the note.

[Title.]

Reply.

Reply.

The plaintiff joins issue on the defence.

 No. 23.

187 . B. No.

In the High Court of Justice,
 Probate Division.

PROBATE OF
 WILL IN
 SOLEMN
 FORM.

Writ issued [_____].

Between A. B. Plaintiff,

and

E. F. Defendant.

Statement of Claim.

1. C. T., late of Bicester, in the county of Oxford, gentleman, Claim.
 deceased, who died on the 20th of January 1875, at Bicester, being
 of the age of 21 years, made his last will, with one codicil thereto,
 the said will bearing date the first day of October 1874, and the said
 codicil the first of January 1875, and in the said will appointed the
 plaintiff sole executor thereof.

2. The said will and codicil were signed by the deceased [or, by
 X. Y., in the presence and by the directions of the deceased, or
 signed by the deceased who acknowledged his signature, or as the

Pleadings. — *case may be*] in the presence of two witnesses present at the same time, the said will in the presence of *H. P.* and *J. R.*, and the said codicil in the presence of *J. D.* and *G. E.*, and who subscribed the same in the presence of the said deceased.

3. The deceased was at the time of the execution of the said will and codicil respectively of sound mind, memory, and understanding.

The plaintiff claims :—

That the Court shall decree probate of the said will and codicil in solemn form of law.

[Title.]

Statement of Defence.

The defendant says as follows :—

Defence.

1. The said will and codicil of the said deceased were not duly executed according to the provisions of the statute 1 Vict. c. 26.

2. The deceased at the time the said will and codicil respectively purport to have been executed was not of sound mind, memory, and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him, whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge being [*state the nature of the fraud*].

5. The said deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof, or of the contents of the residuary clause in the said will [*as the case may be*].

6. The deceased made his true last will, dated the 1st day of January 1873, and in the said will appointed the defendant sole executor thereof. [*Propound this will as in paragraphs two and three of claim.*]

The defendant claims :—

1. That the Court will pronounce against the said will and codicil propounded by the plaintiff :

2. That the Court will decree probate of the said will of the said deceased, dated the 1st of January 1873, in solemn form of law.

[Title.]

Reply.

Reply.

1. The plaintiff joins issue upon the statement of defence of the defendant, as contained in the first, second, third, fourth, and fifth paragraphs thereof.

2. The plaintiff says that the said will of the said deceased, dated the 1st of January 1873, was duly revoked by the will of the said 1st of October 1873, propounded by the plaintiff in his statement of claim.

—
No. 24.

RECOVERY
OF LAND.
LANDLORD
AND
TENANT.

In the High Court of Justice,
Common Pleas Division.

187 . B. No.

Writ issued 3rd August 1876.

Between *A. B.* Plaintiff,
and
C. D. Defendant.

Statement of Claim.

Pleadings.

1. On the _____ day of _____ the plaintiff let to the defendant a house, No. 52, _____ Street, in the city of London, as tenant from year to year, at the yearly rent of 120*l.*, payable quarterly, the tenancy to commence on the day of _____

Claim. *14 C. D. 499*

2. The defendant took possession of the house and continued tenant thereof until the _____ day of _____ last, when the tenancy determined by a notice duly given.

3. The defendant has disregarded the notice and still retains possession of the house.

The plaintiff claims :—

1. Possession of the house.

2. _____ *l.* for mesne profits from the _____ day of _____.

The plaintiff proposes that this action should be tried in London.

In the High Court of Justice, 187 . No.
Common Pleas Division.

Between *A. B.* Plaintiff,
 and
C. D. Defendant,
(by original action)

And between *C. D.* Plaintiff,
 and
A. B. Defendant,
(by counter claim).

The defence and counter claim of the above named *C. D.*

1. Before the determination of the tenancy mentioned in the statement of claim, the Plaintiff *A. B.*, by writing dated the day of _____, and signed by him, agreed to grant to the defendant *C. D.* a lease of the house mentioned in the statement of claim, at the yearly rent of 150*l.*, for the term of 21 years, commencing from the _____ day of _____, when the defendant *C. D.*'s tenancy from year to year determined, and the defendant has since that date been and still is in possession of the house under the said agreement.

Defence.
Counter-claim.

2. By way of counter claim the defendant claims to have the agreement specifically performed and to have a lease granted to him accordingly, and for the purpose aforesaid, to have this action transferred to the Chancery division.

187 . No.
In the High Court of Justice,
Chancery Division.

(Transferred by order dated _____ day of _____.)

Between *A. B.* Plaintiff,
 and
C. D. Defendant,
(by original action)

And between *C. D.* Plaintiff,
 and
A. B. Defendant,
(by counter-claim).

Pleadings.

The reply of the plaintiff *A. B.*

Reply.

The plaintiff *A. B.* admits the agreement stated in the defendant *C. D.*'s statement of defence, but he refuses to grant to the defendant a lease, saying that such agreement provided that the lease should contain a covenant by the defendant to keep the house in good repair and a power of re-entry by the plaintiff upon breach of such covenant, and the plaintiff says that the defendant has not kept the house in good repair, and the same is now in a dilapidated condition.

[Title.]

Joinder of Issue.

The defendant *C. D.* joins issue upon the plaintiff *A. B.*'s statement in reply.

RECOVERY
OF LAND.

No. 25.

187 . B. No.

In the High Court of Justice,
Common Pleas Division.

Writ issued 3rd August 1876.

Between *A. B.* and *C. D.* Plaintiffs,
and
E. F. Defendant.

Statement of Claim.

Claim.

1. *K. L.*, late of Sevenoaks in the county of Kent, duly executed his last will, dated the 4th day of April 1870, and thereby devised his lands at or near Sevenoaks, and all other his lands in the county of Kent, unto and to the use of the plaintiffs and their heirs, upon the trusts therein mentioned for the benefit of his daughters Margaret and Martha, and appointed the plaintiffs executors thereof.

2. *K. L.* died on the 3rd day of January 1875, and his said will was proved by the plaintiffs in the Court of Probate on or about the 4th day of February 1875.

3. *K. L.* was at the time of his death seised in fee of a house at Sevenoaks, and two farms near there called respectively the Home farm containing 276 acres, and the Longton farm containing 700 acres, both in the County of Kent.

4. The defendant, soon after the death of *K. L.*, entered into possession of the house and two farms, and has refused to give them up to the plaintiff.

The plaintiff claims :—

- 1. Possession of the house and two farms :
- 2. *l.* for mesne profits of the premises from the death of *K. L.* till such possession shall be given.

The plaintiff proposes that this action should be tried in the County of Kent.

[Title.]

Statement of Defence.

Defence.

1. The defendant is the eldest son of *I. L.* deceased, who was the eldest son of *K. L.*, in the statement of claim named.

2. By articles bearing date the 31st day of May 1827, and made previous to the marriage of *K. L.* with Martha his intended wife, *K. L.* in consideration of such intended marriage, agreed to settle the house and two farms in the statement of claim mentioned (and

of which he was then seised in fee) to the use of himself for his life, with remainder to the use of his intended wife for her life, and after the survivor's decease, to the use of the heirs of the body of the said *K. L.* on his wife begotten, with other remainders over. Pleadings.

3. The marriage soon after took effect; *K. L.*, by deeds of lease and release, bearing date respectively the 4th and 5th of April 1828, after reciting the articles in alleged performance of them, conveyed the house and two farms to the use of himself for his life, with remainder to the use of his wife for her life, and after the decease of the survivor of them, to the use of the heirs body of *K. L.* on the said Martha to be begotten, with other remainders over.

4. There was issue of the marriage an only son Thomas L and two daughters. After the death of Thomas L, which took place in February 1864, *K. L.*, on the 3rd May 1864, executed disentailing assurance, which was duly enrolled and thereby conveyed the house and two farms to the use of himself in fee.

[Title.]

Reply.

The plaintiffs join issue upon the defendant's statement of defence. Reply.

No. 26.

In the High Court of Justice.
Admiralty Division.

SALVAGE.

Writ issued [].

THE "CAMPANIL."

Between *A. B.* and *C. D.* . . . Plaintiffs,
and
E. F. and *G. H.* . . . Defendants.

Statement of Claim.

1. The "Brazilian" is a screw steamer belonging to the port of Newcastle, of the burthen of 1,359 tons gross registered tonnage, and propelled by engines of 130 horse power, and at the time of the rendering of the salvage services hereinafter mentioned she was navigated by her master and a crew of twenty-four hands. She left the port of Newcastle on the 27th of November 1873, on a voyage to Genoa, and thence by way of Palmaras and Aguilas to the Tyne, and about 10 a.m. on the 26th of December 1873, in the course of her homeward voyage, with a cargo of merchandise, she was off the coast of Portugal, the Island of Ons bearing about S.E. by E., when those on board her sighted a disabled steamer about four points on their starboard bow, in-shore, flying signals of distress. A strong gale was blowing at the time, and there was a very heavy sea running. Claim.

2. The "Brazilian" at once made towards the disabled steamer, which proved to be the "Campanil," the vessel proceeded against in this action. She was heavily laden with a cargo of iron ore. The "Brazilian" as she approached the "Campanil" signalled to her, and the "Campanil" answered by signal that her engines had broken down. By this time the "Campanil" was heading in-shore, rolling heavily, and shipping a large quantity of water. The "Brazilian" came under the lee of the "Campanil" and asked if she wanted assistance. Her master replied that he wanted to be

Pleading: — towed to Vigo as his vessel had lost her screw. The master of the "Brazilian" then asked those on board the "Campanil" to send him a hawser, and for a long time those on board the "Brazilian" made attempts to get a hawser from the "Campanil," and exposed themselves and their vessel to great danger in doing so. The wind and sea rendering it impossible to get the hawser whilst the "Brazilian" was to leeward of the "Campanil," the "Brazilian" went to windward and attempted to float lines by means of life buoys to the "Campanil." During all this time the "Campanil" was quite unmanageable, and yawed about, and there was very great difficulty in manœuvring the "Brazilian" so as to retain command over her and keep her near the "Campanil." It was necessary to keep constantly altering the engines of the "Brazilian," setting them on ahead and reversing them quickly, and in consequence the engines laboured heavily and were exposed to great danger of being strained.

3. Whilst the "Brazilian" was endeavouring to float lines to the "Campanil," the "Campanil" made a sudden lurch and struck the "Brazilian" on her port quarter, knocking in her port bulwark and rail, and causing other damage to the vessel. After many unsuccessful efforts by those on board the "Brazilian," and after they had lost two life buoys and a quantity of rope, a hawser from the "Campanil" was at length made fast on board the "Brazilian," and the "Brazilian" with the "Campanil" in tow steamed easy ahead. A second hawser was then got out and made fast with coir springs, and the "Brazilian" then commenced to tow full speed ahead, each hawser having a full scope of ninety fathoms.

4. The "Brazilian" made towards Vigo, which was about thirty-five miles distant: the vessels made about two knots an hour, the "Brazilian" keeping her engines going at full speed. The "Brazilian" laboured very heavily, and both vessels shipped large quantities of water.

5. About noon one of the tow ropes broke, and both vessels were in danger of being driven ashore, broken water and rocks appearing to leeward, distant about two miles. After great difficulty the broken hawser was made fast again with a heavy spring of a number of parts of rope, and the "Brazilian" towed ahead under the lee of Ons Island.

6. Shortly afterwards the weather moderated and the sea went down a little, and the "Brazilian" was able to make more way, and about 7 p.m. the same day she towed the "Campanil" into Vigo harbour in safety.

7. The "Brazilian" was compelled to remain in harbour the next day to pay port charges and clear at the Custom House.

8. The coast off which the aforesaid services were rendered is rocky and exceedingly dangerous, and strong currents set along it, and but for the services rendered by the "Brazilian" the "Campanil" must have gone ashore and been wholly lost, together with her cargo, and in all probability her master and crew would have been drowned. No other steamer was in sight, and there was not any other prospect of any other efficient assistance.

9. In rendering the said service the "Brazilian" and those on board her were exposed to great danger. Owing to the heavy sea, and the necessity of towing with a long scope of hawser, there was

great danger of fouling the screw of the “Brazilian,” and it required constant vigilance on the part of the master and crew to prevent serious accident. The master and crew of the “Brazilian” underwent much extra fatigue and exertion. Pleadings.

10. The damage sustained by the “Brazilian” in rendering the said services amounts to the sum of 150*l.*, and the value of the extra quantity of coal consumed in consequence of the said services is estimated at 16*l.*, and 4*l.* 1*s.* 5*d.* was paid by the owners of the “Brazilian” for harbour dues and other charges at Vigo.

11. The value of the “Campanil,” her cargo and freight, at the time of the salvage services, was as follows that is to say: The “Campanil” was of the value of 13,000*l.*, her cargo was of the value of 300*l.*, and the gross amount of freight payable upon delivery of the cargo laden on board her at Barrow-in-Furness was 675*l.*

12. The value of the “Brazilian,” her freight and cargo was about 25,050*l.*

The plaintiffs claim:—

1. Such an amount of salvage as to the Court may seem just:
2. That the defendants and their bail be condemned in costs:
3. Such further or other relief as the nature of the case may require.

[Title.]

Statement of Defence.

1. The defendants say that upon the 22nd of December 1873, the iron screw steamship “Campanil,” of the burden of 660 tons register gross, propelled by engines of 70 horse power, navigated by David Boughton, her master, and a crew of sixteen hands, left Porman, bound to Barrow-in-Furness, laden with a cargo of iron ore. Defence.

2. At about 8 a.m. of the 26th of December, whilst the “Campanil” was prosecuting her voyage, the shaft of her propeller broke outside the stern tube, and she lost her propeller. The “Campanil” was then brought to the wind, which was south by east, blowing fresh, and she proceeded under sail for Vigo, and continued to do so till about 9.30 a.m., when two steamships which had been for some time in sight, and coming to the northward, approached the “Campanil.” The ensign of the “Campanil” was hoisted, union up, as a signal to one of such steamships, which afterwards came to the “Campanil,” and proved to be the “Brazilian,” whose owners, master, and crew are the plaintiffs.

3. The “Brazilian” then signalled the “Campanil” and inquired what was the matter, and was signalled in reply that the “Campanil” had lost her propeller, and required to be towed to Vigo, upon which the “Brazilian” signalled for the rope of the “Campanil,” in order to take her in tow. After this the “Brazilian” steamed round the “Campanil” and up on her starboard bow, and in so doing the “Brazilian” came with her port quarter into the starboard bow of the “Campanil” and did her considerable damage.

4. The “Brazilian” then threw a heaving line on board the “Campanil,” and one of the “Campanil’s” hawsers was attached to the line and hauled on board the “Brazilian,” which passed one of her hawsers to the “Campanil” by means of life buoys, and when such hawsers had been secured between the two vessels the

Pleadings. — “Brazilian” commenced to tow the “Campanil” for Vigo, it being at the time about 10.30 a.m. and Ons Island then bearing about south-east by south, and distance about 15 miles.

5. The “Brazilian” proceeded with the “Campanil” in tow, but owing to the two vessels being laden, and to the small power of the “Brazilian,” she was only able to make very slow progress with the “Campanil,” and it was not until 6.30 p.m. of the said day that the “Brazilian” arrived at Vigo with the “Campanil,” which then came to anchor off the town there.

6. The defendants on the _____ day of _____ tendered to the plaintiffs and have paid into Court the sum of 350*l.* for the services so as aforesaid rendered to the “Campanil” and her said cargo and freight, and offered to pay the costs, and submit that the same be ample and sufficient.

[Title.]

Reply.

Reply. 1. The plaintiffs admit the first and second articles of the answer, and they admit that the “Brazilian” came into collision with the “Campanil,” and caused slight damage to the “Campanil,” but save as aforesaid they join issue upon the statement of defence.

No. 27.

187 . No.

TRESPASS
TO LAND.

In the High Court of Justice.
Division.

Writ issued 3rd August 1876.

Between A. B. Plaintiff,

and

E. F. Defendant.

Statement of Claim.

Claim. 1. The plaintiff was on the 5th March 1876, and still is the owner and occupier of a farm called Highfield Farm, in the parish of _____ and county of _____.

2. A private road, known as Highfield Lane, runs through a portion of the plaintiff's farm. It is bounded upon both sides by fields of the plaintiff's, and is separated therefrom by a hedge and ditch.

3. For a long time prior to the 5th March 1876, the defendant had wrongfully claimed to use the said road for his horses and carriages on the alleged ground that the same was a public highway, and the plaintiff had frequently warned him that the same was not a public highway, but the plaintiff's private road, and that the defendant must not so use it.

4. On the 5th March 1876, the defendant came with a cart and horse, and a large number of servants and workmen, and forcibly used the road, and broke down and removed a gate which the plaintiff had caused to be placed across the same.

5. The defendant and his servants and workmen on the same occasion pulled down and damaged the plaintiff's hedge and ditch upon each side of the road, and went upon the plaintiff's field beyond the hedge and ditch, and injured the crops there growing, and dug up and injured the soil of the road; and in any case the acts mentioned in this paragraph were wholly unnecessary for the assertion of the defendant's alleged right to use, or the user of the said road as a highway.

The plaintiff claims :

Pleadings.

1. Damages for the wrongs complained of.
2. An injunction restraining the defendant from any repetition of any of the acts complained of.
3. Such further relief as the nature of the case may require.

[Title.]

Statement of Defence.

1. The defendant says that the road was and is a public highway for horses and carriages ; and a few days before the 5th March 1876, the plaintiff wrongfully erected the gate across the road for the purpose of obstructing and preventing, and it did obstruct and prevent the use of the road as a highway. And the defendant on the said 5th March 1876, caused the said gate to be removed, in order to enable him lawfully to use the road by his horses and carriages as a highway. Defence.

2. The defendant denies the allegations of the fifth paragraph of the statement of claim, and says that neither he nor any of his workmen or servants did any act, or used any violence other than was necessary to enable the plaintiff lawfully to use the highway.

[Title.]

Reply.

The plaintiff joins issue upon the defendant's statement of defence. Reply.

—————
No. 28.

Form of Demurrer.

In the High Court of Justice,
Division.

A. B. v. C. D.

The defendant [plaintiff] demurs to the [plaintiff's statement of complaint or defendant's statement of defence, or of set-off, or of counter-claim], [or to so much of the plaintiff's statement of complaint as claims or as alleges as a breach of contract the matters mentioned in paragraph seventeen, or as the case may be], and says that the same is bad in law on the ground that [here state a ground of demurrer] and on other grounds, sufficient in law to sustain this demurrer.

—————
No. 29.

Memorandum of Entry of Demurrer for Argument.

1874. B. No.

In the High Court of Justice,
Division.

A. B. v. C. D.

Enter for the argument the demurrer of
to

X. Y.,
Solicitor for the plaintiff [or, &c.]

Judgments.

APPENDIX D.

FORMS OF JUDGMENT.

1. *Default of Appearance and Defence in Case of Liquidated Demand.*

1876. B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and *E. F.* Defendants.

30th November 1876.

The defendants [or the defendant *C. D.*] not having appeared to the writ of summons herein [or not having delivered any statement of defence], it is this day adjudged that the plaintiff recover against the said defendant *l.*, and costs, to be taxed.

2. *Judgment in default of Appearance in Action for Recovery of Land.*

[Title, &c.]

30th November 1876.

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the said writ mentioned.

3. *Judgment in default of Appearance and Defence after Assessment of Damages.*

1876. B. No.

In the High Court of Justice,
Division.

Between *A. B.* and *C. D.* Plaintiffs,
and
E. F. and *G. H.* Defendants.

30th November 1876.

The defendants not having appeared to the writ of summons herein [or not having delivered a statement of defence], and a writ of inquiry, dated 1876, having been issued directed to the sheriff of to assess the damages which the plaintiff was entitled to recover, and the said sheriff having by his return dated the 1876, returned that the said damages have been assessed at *l.*, it is adjudged that the plaintiff recover *l.*, and costs to be taxed.

4. *Judgment at Trial by Judge without a Jury.*
[Year, letter, and number.]

Division.

day of 18 .

[If in Chancery Division, name of Judge.]

Between *A. B.* Plaintiff,
and
C. D., *E. F.*, and *G. H.* Defendants.

This action coming on for trial [the day of

and] this day, before _____ in the presence of counsel Judgments.
 for the plaintiff and the defendants [or, if some of the defendants do not
appear, for the plaintiff and the defendant *C. D.*, no one appearing for
 the defendants *E. F.* and *G. H.*, although they were duly served with
 notice of trial as by the affidavit of _____ filed the _____ day of
 _____ appears,] upon hearing the probate of the will of _____,
 the answers of the defendant *C. D.*, *E. F.*, and *G. H.*, to interroga-
 tories, the admission in writing, dated _____ and signed
 by [Mr. _____ the solicitor for] the plaintiff *A. B.* and by Mr.
 _____ the solicitor for] the defendant *C. D.*, the affidavit of
 _____ filed the _____ day of _____, the affidavit
 of _____ filed the _____ day of _____, the evidence
 of _____ taken on their oral examination at the trial, and
 an exhibit marked *X.*, being an indenture dated, &c. and made
 between [parties], and what was alleged by counsel on both sides.
 This court doth declare, &c.

And this Court doth order and adjudge, &c.

5. *Judgment after trial by a Jury.*

[Title, &c.]

15th November 1876.

The action having on the 12th and 13th November 1876, been
 tried before the Honourable Mr. Justice _____ and a
 special jury of the county of _____, and the jury having
 found [*state findings as in officer's certificate*], and the said Mr.
 Justice _____ having ordered that judgment be entered for
 the plaintiff for _____ l. and costs of suit [*or as the case may be*]:
 Therefore it is adjudged that the plaintiff recover against the defen-
 dant _____ l. and _____ l. for his costs of suit [*or that the*
plaintiff recover nothing against the defendant, and that the defen-
dant recover against the plaintiff _____ l. for his costs of defence,
or as the case may be].

6. *Judgment after Trial before Referee.*

[Title, &c.]

30th November 1876.

The action having on the 27th November 1876, been tried before
 X. Y., Esq., an official [*or special*] referee; and the said X. Y.
 having found [*state substance of referee's certificate*], it is this day
 adjudged that

7. *Judgment upon Motion for Judgment.*

[Title, &c.]

30th November 1876.

This day before _____ Mr. X. of counsel for the plaintiff
 [*or as the case may be*], moved on behalf of the said
 [*state judgment moved for*], and the said Mr. X. having been heard of
 counsel for _____ and Mr. Y. of counsel for _____
 the Court adjudged

Præcipes.

APPENDIX E.
FORMS OF PRÆCIPE.

1. *Fieri facias.*

1876. B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Seal a writ of fieri facias directed to the sheriff of to levy
against *C. D.* the sum of *l.* and interest thereon
at the rate of *l.* per centum per annum from the
day of [and *l.* costs] to
Judgment [*or order*] dated day of
[Taxing master's certificate, dated day of]
X. Y. solicitor for [*party on whose*
behalf writ is to issue.]

2. *Elegit.*

187 . . B. No.

In the High Court of Justice.
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Seal a writ of elegit directed to the sheriff of
against of in the county of
for not paying to *A. B.* the sum of *l.*, together with interest
thereon, from the day of [and the sum of *l.*
for cost,] with interest thereon at the rate of $\frac{4}{100}$ per centum per
annum.

Judgment [*or order*] dated day of 18
[Taxing master's certificate, dated day of 18]
X. Y.,
Solicitor for

3. *Venditioni Exponas.*

187 . . B. No.

In the High Court of Justice.
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Seal a writ of venditioni exponas directed to the sheriff of
to sell the goods and of *C. D.* taken under a writ of fieri
facias in this action tested day of
X. Y.,
Solicitor of

4. *Fieri Facias de Bonis Ecclesiasticis.*

Præcipes.

187 . B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. Defendant.

Seal a writ of fieri facias de bonis ecclesiasticis directed to the
bishop [or archbishop as the case may be] of to levy against
C. D. the sum of l.

Judgment [or order] dated day of
[Taxing master's certificate, dated day of].
X. Y.,
Solicitor for

5. *Sequestrari Facias de Bonis Ecclesiasticis.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Seal a writ of sequestrari facias directed to the Lord Bishop
of against *C. D.* for not paying to *A. B.*
the sum of l.

6. *Writ of Sequestration.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Seal a writ of sequestration against *C. D.* for not
at the suit of *A. B.* directed to [names of Commissioners].
Order dated day of

7. *Writ of Possession.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Seal a writ of possession directed to the sheriff of
to deliver possession to *A. B.* of
Judgment dated day of

8. *Writ of Delivery.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Seal a writ of delivery directed to the sheriff of to
make delivery to *A. B.* of

Writs of Execution.

9. *Writ of Attachment.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Seal in pursuance of order dated day of
an attachment directed to the sheriff of against *C. D.* for
not delivering to *A. B.*

Forms of Writs.

APPENDIX F.

FORMS OF WRITS.

1. *Writ of Fieri Facias.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Victoria, by the Grace of God of the United Kingdom of Great
Britain and Ireland Queen, Defender of the Faith.

To the sheriff of greeting.

We command you that of the goods and chattels of *C. D.* in your
bailiwick you cause to be made the sum of *l.* and also
interest thereon at the rate of *l.* per centum per annum
from the day of * which said sum of
money and interest were lately before us in our High Court of
Justice in a certain action [or certain actions, as the case may be]
wherein *A. B.* is plaintiff and *C. D.* and others are defendants [or in
a certain matter there depending intituled "In the matter of *E. F.*"
as the case may be] by a judgment [or order as the case may be] of
our said Court, bearing date the day of
adjudged [or ordered, as the case may be] to be paid by the said
C. D. to *A. B.*, together with certain costs in the said judgment
[or order as the case may be] mentioned, and which costs have been
taxed and allowed by one of the taxing masters of our said Court at
the sum of *l.* as appears by the certificate of the said
taxing master, dated the day of And
that of the goods and chattels of the said *C. D.* in your bailiwick you
further cause to be made the said sum of *l.* [costs], together
with interest thereon at the rate of $\frac{4}{100}$ per centum per annum from
the day of † and that you have that
money and interest before us in our said Court immediately after
the execution hereof to be paid to the said *A. B.* in pursuance of
the said judgment [or order as the case may be]. And in what
manner you shall have executed this our writ make appear to us in
our said Court immediately after the execution thereof. And have
there then this writ.

Witness, &c.

* Day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be.

† The date of the certificate of taxation. The writ *must* be so moulded as to follow the substance of the judgment or order.

2. *Writ of Elegit.*

187 . B. No.

Writs of Execution.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the sheriff of greeting.

Whereas lately in our High Court of Justice in a certain action [*or certain actions, as the case may be*] there depending, wherein *A. B.* is plaintiff and *C. D.* and others are defendants [*or in a certain matter there depending, intituled "In the matter of E. F.," as the case may be*] by a judgment [*or order, as the case may be*] of our said Court made in the said action [*or matter, as the case may be*], and bearing date the day of, it was adjudged [*or ordered, as the case may be*] that *C. D.* should pay unto *A. B.* the sum of *l.*, together with interest thereon after the rate of

. *l.* per centum per annum from the day of together also with certain costs as in the said judgment [*or order, as the case may be*] mentioned, and which costs have been taxed and allowed by one of the taxing masters of the said Court, at the sum of *l.* as appears by the certificate of the said taxing master, dated the day of And afterwards the said *A. B.* came into our said Court, and according to the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said *C. D.*, or any one in trust for him, was seised or possessed of on the day of in the year of our Lord † or at any time afterwards, or over which the said *C. D.* on the said day of or at any time afterwards had any disposing power which he might without the assent of any other person exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof to him and to his assigns, until the said two several sums of *l.* and *l.*, together with interest upon the said sum of *l.*, at the rate of *l.* per centum per annum from the said day of and on the said sum of *l.* (costs) at the rate of *l.* per centum per annum from the day of shall have been levied.

Therefore we command you that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said *C. D.*, or any person or persons in trust for him was or were seized or possessed of on the said day of, § or at any time afterwards, or over which the said *C. D.* on the said day of §,

† The day on which the judgment or order was made.
§ The day on which the decree or order was made.

Writs of
Execution

or at any time afterwards had any disposing power which he might without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums of *l.* and *l.* together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our Court aforesaid, immediately after the execution thereof, under your seals, and the seals of those by whose oath you shall make the said extent and appraisement. And have then this writ.

Witness ourself at Westminster, &c.

Writ of Venditioni Exponas.

1875. B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To the sheriff of greeting.

Whereas by our writ we lately commanded you that of the goods and chattels of *C. D.* [*here recite the fieri facias to the end.*] And on the day of you returned to us in the

Division of our High Court of Justice aforesaid, that by virtue of the said writ to you directed you had taken goods and chattels of the said *C. D.*, to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore, we being desirous that the said *A. B.* should be satisfied his money and interest command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said *C. D.*, by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of Justice immediately after the execution hereof, to be paid to the said *A. B.* And have there then this writ.

Witness ourself at Westminster, the day of
in the year of our reign.

Writ of Fieri facias de Bonis Ecclesiasticis.

1875. B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the Right Reverend Father in God [*John*] by Divine permission Lord Bishop of greeting: We command you, that of the ecclesiastical goods of *C. D.*, clerk in your diocese, you cause to be made *l.* which lately before us in our High Court of Justice in

a certain action [or certain actions, as the case may be] wherein *A. B.* is plaintiff and *C. D.* is defendant [or in a certain matter there depending, intituled “In the matter of *E. F.*,” as the case may be], by a judgment [or order, as the case may be] of our said Court bearing date the _____ day of _____, was adjudged [or ordered, as the case may be] to be paid by the said *C. D.* to the said *A. B.*, together with interest on the said sum of _____ at the rate of _____ l. per centum per annum, from the _____ day of _____ and have that money, together with such interest as aforesaid before us in our said Court immediately after the execution hereof, to be rendered to the said *A. B.*, for that our sheriff of _____ returned to us in our said Court on _____ [or “at a day now past”] that the said *C. D.* had not any goods or chattels or any lay fee in his bailiwick whereof he could cause to be made the said _____ l. and interest aforesaid or any part thereof, and that the said *C. D.* was a beneficed clerk (to wit) rector of rectory [or vicar of the vicarage] and parish church of _____, in the said sheriff’s county, and within your diocese [as in the return], and in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof, and have you there then this writ. Witness ourself at Westminster, the _____ day of _____ in the year of our Lord.

Writs of Execution.

5. *Writ of Fieri Facias to the Archbishop de Bonis Ecclesiasticis during the vacancy of a Bishop’s See.*

Victoria [&c. as in the preceding form]: To the Right Reverend Father in God [John] by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, greeting: We command you, that of the ecclesiastical goods of *C. D.*, clerk in the diocese of _____ which is in the province of Canterbury, as ordinary of that church, the episcopal see of _____ now being vacant, you cause to be made [&c., conclude as in the preceding form].

6. *Writ of Sequestrari Facias de Bonis Ecclesiasticis.*

1875. B. No.

In the High Court of Justice.
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To the Right Reverend Father in God [John] by Divine permission Lord Bishop of _____ greeting: Whereas we lately commanded our sheriff of _____ that he should omit not by reason of any liberty of his county, but that he should enter the same, and cause [to be made, if after the return to a fieri facias, or delivered, if after the return to an degit, &c., and in either case recite the former writ]. And whereupon our said sheriff of _____ on _____ [or “at a day past”] returned to us in the _____ division of our said Court of Justice, that the said *C. D.* was a beneficed clerk; that is to say, rector of the rectory [or vicar of the vicarage] and parish church of _____ in the county of _____, and

Writs of Execution.

within your diocese, and that he had not any goods or chattels, or any lay fee in his bailiwick [*here follow the words of the sheriff's return*]. Therefore, we command you that you enter into the said rectory [*or vicarage*] and parish church of _____, and take and sequester the same into your possession, and that you hold the same in your possession until you shall have levied the said _____ l. and interest aforesaid, of the rents, tithes, rentcharges in lieu of tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in your diocese of and belonging to the said rectory [*or vicarage*] and parish church of _____ and to the said *C. D.* as rector [*or vicar*] thereof to be rendered to the said *A. B.*, and what you shall do therein make appear to us in our said Court immediately after the execution hereof, and have you there then this writ. Witness ourself at Westminster, the _____ day of _____ in the year of our Lord

7. *Writ of Possession.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Victoria, _____ to the sheriff of _____, greeting :
Whereas lately in our High Court of Justice, by a judgment of the _____ Division of the same Court [*A. B.* recovered] *or* [*E. F.* was ordered to deliver to *A. B.*] possession of all that _____ with the appurtenances in your bailiwick : Therefore, we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said *A. B.* to have possession of the said land and premises with the appurtenances. And in what manner you have executed this our writ make appear to the Judges of the _____ Division of our High Court of Justice immediately after the execution hereof, and have you there then this writ. Witness, &c.

8. *Writ of Delivery.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the sheriff of _____ greeting : We command you, that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment for the return of which execution has been ordered to issue*], to be returned to *A. B.*, which the said *A. B.* lately in our _____ recovered against *C. D.* [*or C. D.* was ordered to deliver to the said *A. B.*] in an action in the _____ Division of our said Court. And we further command you, that if the said chattels cannot be found in your bailiwick, you

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distrain the said *C. D.* by all his lands and chattels in your bailiwick, so that neither the said *C. D.* nor any one for him do lay hands on the same until the said *C. D.* render to the said *A. B.* the said chattels ; and in what manner you shall have executed this our writ make appear to the Judges of the Division of our High Court of Justice, immediately after the execution hereof, and have you there then this writ. Witness, &c.

Writs of Execution.

The like, but instead of a distress until the chattel is returned, commanding the Sheriff to levy on defendant's goods the assessed * value of it.

[*Proceed as in the preceding form until the, * and then thus:*] And we further command you, that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said *C. D.* in your bailiwick you cause to be made l. [*the assessed value of the chattels*], and in what manner you shall have executed this our writ make appear to the Judges of the Division of our High Court of Justice at Westminster, immediately after the execution hereof, and have you there then this writ. Witness, &c.

9. *Writ of Attachment.*

187 . No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Victoria, &c.

To the sheriff of greeting.

We command you to attach *C. D.* so as to have him before us in the Division of our High Court of Justice where-soever the said Court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, and bring this writ with you. Witness, &c.

10. *Writ of Sequestration.*

187 . B. No.

In the High Court of Justice,
Division.

Between *A. B.* Plaintiff,
and
C. D. and others Defendants.

Victoria, &c.

To [*names of not less than four Commissioners*] greeting.

Whereas lately in the Division of our High Court of Justice in a certain action there depending, wherein *A. B.* is plaintiff and *C. D.* and others are defendants [*or, in a certain matter then depending, intituled "In the matter of E. F.," as the case may be*] by a judgment [*or order as the case may be*] of our said Court made in the said action [*or matter*], and bearing date the

Writs of
Execution.

day of 187 , it was ordered that the said C. D. should [pay into Court to the credit of the said action the sum of *l.*; or, as the case may be]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said C. D., and to collect, receive and sequester in to your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said C. D., and that you do collect, take and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall [pay into Court to the credit of the said action the sum of *l.*, or, as the case may be,] clear his contempt, and our said Court make other order to the contrary. Witness, &c.

SECOND SCHEDULE.

Session and Chapter.	Title.	Extent of Repeal.
6 Geo. 4. c. 84. . . .	An act to provide for the augmenting the salaries of the Master of the Rolls and the Vice-Chancellor of England, the Chief Baron of the Court of Exchequer, and the Puisne Judges and Barons of the Courts in Westminster Hall, and to enable His Majesty to grant an annuity to such Vice-Chancellor, and additional annuities to such Master of the Rolls, Chief Baron, and Puisne Judges and Barons on their resignation of their respective offices.	Section seven.
32 & 33 Vict. c. 71. .	The Bankruptcy Act 1869.	Section one hundred and sixteen, from "provided that at any time," inclusive, to the end of the section.
32 & 33 Vict. c. 83. .	The Bankruptcy Repeal and Insolvent Court Act 1869.	Section nineteen from "provided that at any time," inclusive, to the end of the section.
36 & 37 Vict. c. 66. .	Supreme Court of Judicature Act 1873.	So much of sections three and sixteen as relates to the London Court of Bankruptcy, section six, section nine, section ten, so much of section thirteen as relates to additional judges of the Court of Appeal, section thirty-four from "all matters pending" in the London Court of Bankruptcy," to "London Court of Bankruptcy," section thirty-five, section forty-eight, section fifty-three, section sixty-three, section sixty-eight, section sixty-nine, section seventy, section seventy-one, section seventy-two, section seventy-three, section seventy-four, and the whole of the schedule.

AT THE COURT AT OSBORNE HOUSE,
ISLE OF WIGHT.

The 12th day of August, 1875.

PRESENT,
THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL.

Whereas by an Act passed in the present Session of Parliament, intituled "An Act to amend and extend the Supreme Court of Judicature Act, 1873," it is enacted that Her Majesty may, at any time after the passing and before the commencement of the said Act, by Order in Council, made upon the recommendation of the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and the Lords Justices of Appeal in Chancery, or any five of them, and the other judges of the several courts intended to be united and consolidated by the said principal Act as amended by the said Act, or of a majority of such other judges, make any further or additional Rules of Court for carrying the said principal Act and the said Act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the Rules in the first schedule to the said Act; that is to say, (1) for regulating the sittings of the High Court of Justice and the Court of Appeal, and of any Divisional or other Courts thereof respectively, and of the judges of the said High Court sitting in Chambers; and (2) for regulating the pleadings, practice, and procedure in the High Court of Justice and Court of Appeal; and (3) generally for regulating any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof or of the Supreme Court, or to the costs of proceedings therein:

Now, therefore, Her Majesty, in pursuance of the said Act, and by and with the advice of Her Privy Council, and upon the recommendation of the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and the Lords Justices of Appeal in Chancery, and a majority of the other judges of the several courts intended to be united and consolidated by the said principal Act as amended by the said Act, is pleased to make and issue the Additional Rules of Court following for the purposes aforesaid.

C. L. PEEL.

ADDITIONAL RULES OF COURT UNDER THE SUPREME COURT OF JUDICATURE ACT, 1875.

ORDER I.

Where any written deposition of a witness has been filed for use on a trial, such deposition shall be printed, unless otherwise ordered.

ORDER II.

The Rules of Court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed.

ORDER III.

Other affidavits than those required to be printed by Order XXXVIII., Rule 6, in the schedule to the Supreme Court of Judicature Act, 1875, may be printed if all the parties interested consent thereto, or the Court or Judge so order.

ORDER IV.

The third Rule of the Order XXXIV. in the first schedule to the Supreme Court of Judicature Act, 1875, shall apply to a special case, pursuant to the Act of 13 & 14 Victoria, c. 35.

ORDER V.

Where, pursuant to Rules of Court, any pleading, special case, petition of right, deposition or affidavit is to be printed, and where any printed or other office copy thereof is to be taken, the following regulations shall be observed:—

1. The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by Rule 2 of Order LVI. in the first schedule to the Supreme Court of Judicature Act, 1875.

2. To enable the party printing, to print any deposition, the officer with whom it is filed shall on demand deliver to such party a copy written on draft paper on one side only.

3. The party printing shall, on demand in writing, furnish to any other party or his solicitor any number of printed copies, not exceeding ten, upon payment therefor at the rate of 1d. per folio for one copy, and $\frac{1}{2}$ d. per folio for every other copy.

4. The solicitor of the party printing shall give credit for the whole amount payable by any other party for printed copies.

5. The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the Court or Judge shall otherwise direct.

6. The party by or on whose behalf any deposition, affidavit, or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed.

7. The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates.

8. Where any party is entitled to a copy of any deposition, affidavit, proceeding, or document filed or prepared by or on behalf of another party, which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared.

9. The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the Court or Judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges.

10. In the case of an *ex parte* application for an injunction or writ of *ne erret regno*, the party making such application is to furnish copies of the affidavits upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court.

11. It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party.

12. The name and address of the party or solicitor by whom any copy is furnished is to be endorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be.

13. The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies.

14. In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for twenty-four hours from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be due or payable to the solicitor so making default in respect of the copy or copies so applied for.

15. Where, by any Order of the Court (whether of appeal or otherwise) or a Judge, any pleading, evidence, or other document is ordered to be printed, the Court or Judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit.

ORDER VI.

The following regulations as to costs of proceedings in the Supreme Court of Judicature shall regulate such costs from the commencement of the Supreme Court of Judicature Acts, 1873 and 1875 :—

1. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed “lower scale” in the schedule hereto—

In all actions for purposes to which any of the forms of indorsement of claim on writs of summons in Sections II., IV., and VII. in Part II. of Appendix A., referred to in the third Rule of Order III. in the schedule to the Supreme Court of Judicature Act, 1875, or other similar forms, are applicable (except as after provided in actions for injunctions);

In all causes and matters by the 34th section of the Supreme Court of Judicature Act, 1873, assigned to the Queen’s Bench Division of the Court;

In all causes and matters by the 34th section of the said Act assigned to the Common Pleas Division of the Court;

In all causes and matters by the 34th section of the said Act assigned to the Exchequer Division of the Court;

In all causes and matters by the 34th section of the said Act assigned to the Probate, Divorce, and Admiralty Division of the Court;

And also in causes and matters by the 34th section of the said Act assigned to the Chancery Division of the Court in the following cases; (that is to say,)

1. By creditors, legatees (whether specific, pecuniary, or residuary), devisees, (whether in trust or otherwise), heirs-at-law or next-of-kin, in which the personal or real or personal and real estate for or against or in respect of which or for an account or administration of which the demand may be made shall be under the amount or value of 1,000*l.*
2. For the execution of trusts or appointment of new trustees in which the trust estate or fund shall be under the amount or value of 1,000*l.*

3. For dissolution of partnership or the taking of partnership or any other accounts in which the partnership assets or the estate or fund shall be under the amount or value of 1000*l*.
 4. For foreclosure or redemption, or for enforcing any charge or lien in which the mortgage whereon the suit is founded, or the charge or lien sought to be enforced, shall be under the amount or value of 1,000*l*.
 5. And for specific performance in which the purchase money or consideration shall be under the amount or value of 1,000*l*.
 6. In all proceedings under the Trustees Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate or fund to which the proceeding relates shall be under the amount or value of 1,000*l*.
 7. In all proceedings relating to the guardianship or maintenance of infants in which the property of the infant shall be under the amount of or value of 1,000*l*.
 8. In all proceedings by original special case, and in all proceedings relating to funds carried to separate accounts, and in all proceedings under any Railway or Private Act of Parliament, or under any other statutory or summary jurisdiction, and generally in all other cases where the estate or fund to be dealt with shall be under the amount or value of 1,000*l*.
2. Solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "higher scale" in the schedule hereto; in all actions for special injunctions to restrain the commission or continuance of waste, nuisances, breaches of covenant, injuries to property and infringement of rights, easements, patents and copyrights, and other similar cases where the procuring such injunction is the principal relief sought to be obtained, and in all cases other than those to which the fees in the column headed "lower scale" are hereby made applicable.
3. Notwithstanding these Rules, the Court or Judge

may in any case direct the fees set forth in either of the said two columns to be allowed to all or either or any of the parties, and as to all or any part of the costs.

4. The provisions of Order LXIII. in the first schedule to the Supreme Court of Judicature Act, 1875, shall apply to these Rules.

The SCHEDULE above referred to.

An Order or Rule herein referred to by number shall mean the Order or Rule so numbered in the First Schedule to the Supreme Court of Judicature Act, 1875.

WRITS, SUMMONSES, AND WARRANTS.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Writ of summons for the com- ment of any action - - -	0	6	8	0	13	4
And for endorsement of claims, if special - - - - -	0	5	0	0	5	0
Concurrent writ of summons -	0	6	8	0	6	8
Renewal of a writ of summons -	0	6	8	0	6	8
Notice of a writ for service in lieu of writ out of jurisdiction -	0	4	0	0	5	0
Writ of inquiry - - - - -	1	1	0	1	1	0
Writ of mandamus or injunction	0	10	0	1	1	0
Or per folio - - - - -	0	1	4	0	1	4
Writ of subpoena ad testificandum duces tecum - - - - -	0	6	8	0	6	8
And if more than four folios, for each folio beyond four - - -	0	1	4	0	1	4
Writ or writs of subpoena ad testi- ficandum for any number of persons not exceeding three, and the same for every additional number not exceeding three -	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Writ of distringas, pursuant to statute 5 Vict. c. 8 - - -	0	13	4	0	13	4
Writ of execution, or other writ to enforce any judgment or order	0	7	0	0	10	0
And if more than four folios, for each folio beyond four - -	0	1	4	0	1	4
Procuring a writ of execution or notice to the sheriff, marked with a seal of renewal - -	0	6	8	0	6	8
Notice thereof to serve on sheriff	0	4	0	0	5	0
Any writ not included in the above - - - - -	0	7	0	0	10	0

These fees include all endorsements and copies, or precipes, for the officer sealing them, and attendances to issue or seal, but not the Court fees.

Summons to attend at Judges' Chambers - - - -	0	3	0	0	6	8
Or if special, at taxing officer's discretion, not exceeding - -	0	6	8	1	1	0
Copy for the judge, when required	0	2	0	0	2	0
Or per folio - - - -	—			0	0	4
Original summons for proceedings in chambers in the Chancery division - - - -	0	13	4	1	1	0
And attending to get same and duplicate sealed, and at the proper office to file duplicate and get copies for service stamped - - - -	0	13	4	0	13	4
Copy for the judge - - - -	0	2	0	0	2	0
Or per folio - - - -	—			0	0	4
Endorsing same and copies under 8th rule of the 35th of the Consolidated General Orders of the Court of Chancery - - -	0	6	8	0	6	8

SERVICES, NOTICES, AND DEMANDS.

Service of any writ, summons, warrant, interrogatories, petition, order, notice, or demand on a party who has not entered an appearance, and if not authorised to be served by post -	0	5	0	0	5	0
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	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
If served at a distance of more than two miles from the nearest place of business, or office of the solicitor serving the same, for each mile beyond such two miles therefrom - - - -	0	1	0	0	1	0
Where in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence in addition - -	0	7	0	0	7	0
Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit.						
For service out of the jurisdiction such allowance is to be made as the taxing officer shall think fit.						
Service where an appearance has been entered on the solicitor or party - - - -	0	2	6	0	2	6
Or if authorised to be served by post	0	1	6	0	1	6
Where any writ, order, and notice, or any two of them, have to be served together, one fee only for service is to be allowed.						
In addition to the above fees, the following allowances are to be made :—						
As to writs, if exceeding two folios, for copy for service, per folio beyond such two - -	0	0	4	0	0	4
As to summons to attend at the Judges' Chambers, for each copy to serve - - - -	0	1	0	0	2	0
Or per folio - - - -	0	0	4	0	0	4
As to notices in proceedings to wind up companies, for preparing or filling up each notice to creditors to attend and receive debts, and to contributories to settle list of contributories -	0	1	0	0	1	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
And for preparing or filling up each notice to contributories to be served with a general order for a call, or an order for payment of a call - - -	0	1	0	0	1	0
And for drawing notice to be served on contributories or creditors of a meeting, per folio	0	1	0	0	1	0
For each copy of the last-mentioned notice to serve, per folio	0	0	4	0	0	4
For preparing or filling up for service in any other cause or matter, each notice to creditors to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal and interest, and costs, if any - -	0	1	0	0	1	0
For preparing notice to produce or admit, and one copy - -	0	5	0	0	7	6
If special or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio - - - -	0	0	8	0	1	4
And for each copy beyond the first, such allowance as the taxing master shall think proper, not exceeding per folio - - -	0	0	4	0	0	4
For preparing notice of motion -	0	2	0	0	5	0
Or per folio - - - -	0	1	0	0	1	0
Copy for service - - - -	0	1	0	0	1	0
Or per folio - - - -	—			0	0	4
For preparing any necessary or proper notice, not otherwise provided for and demand -	0	1	6	0	1	6
Or if special, and necessarily exceeding three folios, for preparing same, for each folio beyond three - - - -	0	1	0	0	1	0
And for each copy for service, per folio beyond such three -	0	0	4	0	0	4
Copies for service of interrogatories and petitions, and of orders with necessary notices (if any) to accompany, per folio	0	0	4	0	0	4

Lower Scale.	Higher Scale.
£ s. d.	£ s. d.

Except as otherwise provided, the allowances for services include copies for service.

Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.

In proceedings to wind up a company, the usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing, and amount to more than 3*l*.

Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment, is not to be allowed.

APPEARANCES.

Entering any appearance - -	0	6	8	0	6	8
If entered at one time, for more than one person, for every defendant beyond the first -	0	1	0	0	2	0
If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above - - -	0	6	8	0	6	8

INSTRUCTIONS.

To sue or defend - - -	0	6	8	0	13	4
For statement of complaint -	0	13	4	2	2	0
For statement or further statement of defence - - - -	0	6	8	0	13	4
For counter claim - - - -	0	6	8	0	13	4
For reply by plaintiff when defendant sets up a counter claim	0	13	4	1	1	0
For reply or further reply in any other case by plaintiff or other person, with or without joinder of issue - - - -	0	6	8	0	13	4
For confession of defence - -	0	6	8	0	13	4

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
For joinder of issue without other matter and for demurrer -	0	6	8	0	13	4
For special case, special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness - - - -	0	6	8	0	13	4
To amend any pleading - - -	0	6	8	0	13	4
For affidavit in answer to interrogatories, and other special affidavits - - - -	0	6	8	0	6	8
To appeal - - - -	0	13	4	1	1	0
To add parties by order of Court or judge - - - -	0	6	8	0	13	4
For counsel to advise on evidence when the evidence in chief is to be taken orally - - -	0	6	8	0	6	8
Or not to exceed - - - -	0	13	4	1	1	0
For counsel to make any application to a Court or judge where no other brief - - - -	0	6	8	0	10	0
For brief on motion for special injunction - - - -	0	13	4	1	1	0
For brief on hearing or trial of action upon notice of trial given, whether such trial be before a judge, with or without a jury or, before an official or special referee, or on trial of an issue of fact before a judge, commissioner, or referee, or on assessment of damages - -	1	1	0	2	2	0
For such brief, and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence.						
The fees for instructions for brief are not to apply to a hearing on further consideration.						

DRAWING PLEADINGS AND OTHER DOCUMENTS.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Statement of claim - - - -	0	10	0	1	1	0
Or per folio - - - -	0	1	0	0	1	0
Statement of defence - - - -	0	5	0	0	10	0
Or per folio - - - -	0	1	0	0	1	0
Statement of defence and counter claim - - - - -	0	5	0	1	1	0
Or per folio - - - - -	0	1	0	0	1	0
Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, demurrer, and any other pleading (not being a petition or summons) and amendments of any pleading - - - -	0	5	0	0	10	0
Or per folio - - - - -	0	1	0	0	1	0
Particulars, breaches, and objec- tions, when required, and one copy to deliver - - - -	0	5	0	0	6	8
Or such amount as the taxing officer shall think fit, not ex- ceeding per folio - - - -	0	0	8	0	1	4
If more than one copy to be delivered, for each other copy per folio - - - - -	0	0	4	0	0	4
Special case, whether original or in an action, affidavits in answer to interrogatories and other spe- cial affidavits, special petitions, and interrogatories, per folio -	0	1	0	0	1	0
Brief, on trial or hearing of cause, issue of fact, assessment of damages, examination of wit- nesses, demurrer, special case and petition before a Court or judge, sheriff, commissioner, referee, examiner, or officer of the court, when necessary and proper in addition to pleadings, including necessary and proper observations, per folio - - -	0	1	0	0	1	0
Brief on application to add parties	0	6	8	0	10	0
Or per folio - - - - -	0	1	0	0	1	0
Brief on further consideration, per sheet of 10 folios - - - -	0	6	8	0	6	8

RULES OF THE SUPREME COURT (COSTS).

20. The Schedule to "The Rules of the Supreme Court (Costs)" is hereby altered in the following particulars:—

The allowance for printing a document not exceeding ten folios shall be 10s., and, in addition, for every twenty beyond the first twenty copies of any document not exceeding twenty-four folios, 2s.

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
Accounts, statements, and other documents for the Judges' Chambers, when required, and fair copy to leave, per folio -	0	0	8	0	1	4
Advertisements to be signed by judge's clerk, including attendance therefor - - -	0	6	8	0	13	4
Bill of costs for taxation, including copy for the taxing officer - - - - -	0	0	8	0	0	8

COPIES.

Of pleadings, briefs, and other documents where no other provision is made, at per folio -	0	0	4	0	0	4
Where, pursuant to Rules of Court any pleading, special case or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the court), at per folio - - - - -	0	0	4	0	0	4
And for examining the proof print, at per folio - - - - -	0	0	2	0	0	2
And for printing the amount actually and properly paid to the printer, not exceeding per folio - - - - -	0	1	0	0	1	0
And in addition for every 20 beyond the first 20 copies, at per folio - - - - -	0	0	1	0	0	1
And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable.						

These allowances are to include all attendances on the printer.

Lower Scale. Higher Scale.
 £ s. d. £ s. d.

The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor.

In addition to the allowances for printing and taking printed copies, there shall be allowed for such printed copies as may be necessary or proper for the following but no other purposes (*videlicet*) :—

Of any pleading for delivery to the opposite party, or filing in default of appearance - -

Of any special case for filing -

Of any petition of right for presentation, if presented in print, and for the solicitor of the Treasury, and service on any party - - - - -

Of any pleading, special case, or petition of right, for the use of the Court or judge - - -

Of any affidavit to be sworn to in print - - - - -

And of any pleading, special case, petition of right, or evidence for the use of counsel in Court, and in country agency causes when proper to be sent as a close copy for the use of the country solicitor, at per folio - -

0 0 2 0 0 3

Such additional allowances for printed copies for the Court or judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause.

Close copies, whether printed or written, are not to be allowed as of course, but the allowance

Lower Scale. Higher Scale.
 £ s. d. £ s. d.

is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing officer.

Inserting amendments in a printed copy of any pleading, special case, or petition of right, when not reprinted - - - -	0	1	0	0	5	0
Or per folio - - - -	0	0	4	0	0	4

PERUSALS.

Of statement of complaint, statement of defence, reply, joinder of issue, demurrer, and other pleading (not being a petition or summons) by the solicitor of the party to whom the same are delivered - - - -	0	6	8	0	13	4
Or per folio - - - -	—			0	0	4
Of amendment of any such pleading in writing - - - -	0	6	8	0	6	8
Or per folio - - - -	—			0	0	4
If same reprinted - - - -	0	6	8	0	13	4
Or per folio of amendment - -	—			0	0	4
Of interrogatories to be answered by a party by his solicitor -	0	6	8	0	13	4
Or per folio - - - -	—			0	0	4
Of special case by the solicitor of any party except the one by whom it is prepared - -	0	6	8	0	13	4
Or per folio - - - -	—			0	0	4
Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Order XVI., Rule 18, and of defendant's statement of defence and counter claim served on a person not a party under Order XXII., Rule 6, by the solicitor of the party served therewith, and in these several cases the perusal of the plaintiff's statement of						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
complaint is also to be allowed unless the solicitor has been previously allowed such perusal	0	6	8	0	13	4
Or per folio - - - -	—			0	0	4
Of notice to produce and notice to admit by the solicitor of the party served - - -	0	6	8	0	13	4
Of affidavit in answer to interrogatories by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio -	0	0	4	0	0	4

ATTENDANCES.

To obtain consent of next friend to sue in his name - - -	0	6	8	0	13	4
To deliver or file any pleading (not being a petition or summons) and a special case - - -	0	3	4	0	6	8
To inspect, or produce for inspection, documents pursuant to a notice to admit - - -	0	6	8	0	13	4
Or per hour - - - -	0	6	8	0	6	8
To examine and sign admissions -	0	6	8	0	13	4
To inspect, or produce for inspection, documents referred to in any pleading or affidavit, pursuant to notice under Order XXXI., Rule 14 - - -	0	6	8	0	6	8
Or per hour - - - -	0	6	8	0	6	8
To obtain or give any necessary or proper consent - - -	0	6	8	0	6	8
To obtain an appointment to examine witnesses - - -	0	6	8	0	6	8
On examination of witnesses before any examiner, commissioner, officer, or other person -	0	13	4	0	13	4
Or according to circumstances, not to exceed - - - -	2	2	0	2	2	0
Or if without counsel, not to exceed - - - -	—			3	3	0
On deponents being sworn, or by a solicitor or his clerk to be						

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
sworn, to an affidavit in answer to interrogatories or other special affidavit - - -	0	6	8	0	6	8
On a summons at Judges' Chambers	0	6	8	0	6	8
Or according to circumstances not to exceed - - -	1	1	0	1	1	0
In the Chancery division, all allowances for attending at the Judges' Chambers are to be by the judge or chief clerk as heretofore.						
To file chief clerks' and taxing masters' certificates, and get copy marked as an office copy -	0	6	8	0	6	8
On counsel with brief or other papers—						
If counsel's fee one guinea -	0	3	4	0	6	8
If more and under five guineas - - - -	0	6	8	0	6	8
If five guineas and under 20 guineas - - - -	0	6	8	0	13	4
If 20 guineas - - - -	0	13	4	1	1	0
If 40 guineas or more - -			—	2	2	0
On consultation or conference with counsel - - - -	0	13	4	0	13	4
To enter or set down action, demurrer, special case, or appeal, for hearing or trial - - -	0	6	8	0	6	8
In Court on motion of course and on counsel and for order - -	0	10	0	0	13	4
To present petition for order of course and for order - - -	0	6	8	0	13	4
In Court on every special motion, each day - - - -	0	6	8	0	13	4
On same when heard each day -	0	13	4	0	13	4
Or according to circumstances -	1	1	0	2	2	0
On demurrer, special case, or special petition, or application adjourned from the Judge's Chambers, when in the special paper for the day, or likely to be heard - - - -	0	6	8	0	10	0
On same when heard - - - -	0	13	4	1	1	0
Or according to circumstances, not to exceed - - - -	1	1	0	2	2	0

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
On hearing or trial of any cause, or matter, or issue of fact, in London or Middlesex, or the town where the solicitor resides or carries on business, whether before a judge with or without a jury, or commissioner, or re- feree, or on assessment of dam- ages, when in the paper - -	0	10	0	0	10	0
When heard or tried - - -	0	13	4	1	1	0
Or according to circumstances -	2	2	0	2	2	0
When not in London or Middle- sex, nor in the town where the solicitor resides or carries on business, for each day (except Sundays) he is necessarily ab- sent - - - - -	2	2	0	3	3	0
And expenses (besides actual rea- sonable travelling expenses) each day, including Sundays -	1	1	0	1	1	0
Or if the solicitor has to attend on more than one trial or assess- ment at the same time and place, in each case - - -	1	1	0	1	11	6
The expenses in such case to be rateably divided.						
To hear judgment when same ad- journed - - - - -	0	6	8	0	13	4
Or according to circumstances -	0	13	4	1	1	0
To deliver papers (when required) for the use of a judge prior to a hearing - - - - -	0	6	8	0	6	8
If more than one judge - - -	0	13	4	0	13	4
On taxation of a bill of costs -	0	6	8	0	6	8
Or according to circumstances, not to exceed - - - - -	2	2	0	2	2	0
In causes for purposes within the cognizance of the Court of Chan- cery before the Act passed, such further fee as the taxing officer may think fit, not ex- ceeding the allowances hereto- fore made.						
To obtain or give an undertaking to appear - - - - -	0	6	8	0	6	8

	Lower Scale.			Higher Scale.		
	£	s.	d.	£	s.	d.
To present a special petition, and for same answered - - -	0	6	8	0	6	8
On printer to insert advertisement in Gazette - - - -	0	6	8	0	6	8
On printer to insert same in other papers, each printer - -	—			0	6	8
Or every two - - - -	0	6	8	—		
On registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing - - -	0	6	8	0	6	8
For an order drawn up by chief clerk, and to get same entered -	0	6	8	0	6	8
On counsel to procure certificate that cause proper to be heard as a short cause, and on registrar to mark same - - -	0	6	8	0	6	8
To mark conveyancing counsel or taxing master - - - -	0	6	8	0	6	8
For preparing and drawing up an order made at chambers in proceedings to wind-up a company and attending for same, and to get same entered - - -	0	13	4	0	13	4
And for engrossing every such order, per folio - - -	0	0	4	0	0	4

NOTE.—An order of course means an order made on an *ex parte* application, and to which a party is entitled as of right on his own statement and at his own risk.

OATHS and EXHIBITS.

Commissioners to take oaths or affidavits. For every oath, declaration, affirmation, or attestation upon honour in London or the country - - -	0	1	6	0		6
The solicitor for preparing each exhibit in town or country -	0	1	0	0	1	0
The commissioner for marking each exhibit - - - -	0	1	0	0	1	0

TERM FEES.

	Lower Scale.	Higher Scale.
	£ s. d.	£ s. d.
For every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter, by or affecting the party, other than the issuing and serving the writ of summons, shall take place	0 15 0	0 15 0
And further, in country agency causes or matters, for letters	0 6 0	0 6 0
Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it.		
In addition to the above an allowance is to be made for the necessary expense of postages, carriage and transmission of documents.		

SPECIAL ALLOWANCES AND GENERAL PROVISIONS.

1. As to writs of summons requiring special indorsement, original special cases, pleadings and affidavits in answer to interrogatories, and other special affidavits, when the higher scale is applicable, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper.

2. As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

3. As to instructions to sue or defend, when the higher scale is applicable, if in consequence of the instructions being taken separately from more than three persons (not being co-partners) the taxing officer shall consider the fee above provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable.

4. As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.

5. The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponent to settle and read over.

6. As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

7. As to perusals the fees are not to apply where the same solicitor is for both parties.

8. As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

9. As to agency correspondence, in country agency causes and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper.

10. As to attendances at the Judges' Chambers, where, from the length of the attendance, or from the difficulty of the case, the judge or master shall think the highest of the above fees an insufficient remuneration for the services performed, or where the preparation of the case or matter

to lay it before the judge or master in chambers, or on a summons, shall have required skill and labour for which no fee has been allowed, the judge or master may allow such fee in lieu of the fee of 1*l.* 1*s.* above provided, not exceeding 2*l.* 2*s.*, or where the higher scale is applicable 3*l.* 3*s.*, or in proceedings to wind up a company 5*l.* 5*s.*, as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a judge at chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the judge to deserve higher remuneration than the ordinary fees, the judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the judge, specifying distinctly the grounds of such allowance, such fee, not exceeding 10 guineas, as in his discretion he may think fit, instead of the above fees of 2*l.* 2*s.*, 3*l.* 3*s.*, and 5*l.* 5*s.*

11. As to attendances at the Judges' Chambers, where by reason of the non-attendance of any party (and it is not considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

12. A folio is to comprise 72 words, every figure comprised in a column being counted as one word.

13. Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

14. As to counsel attending at Judges' Chambers, no costs thereof shall in any case be allowed, unless the judge certifies it to be a proper case for counsel to attend.

15. As to inspection of documents under Order XXXI., Rule 14, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

16. As to taking copies of documents in possession of another party, or extracts therefrom, under Rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of 4*d.* per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

17. Where a petition in any cause or matter assigned to the Chancery division is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be 2*l.* 2*s.* The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or judge shall consider the party entitled, notwithstanding such notice or tender, to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition without appearing thereon he is to be allowed a fee not exceeding 2*l.* 2*s.*

18. The Court or judge may, at the hearing of any cause or matter, or upon any application or procedure in any cause or matter in Court or at chambers, and whether the same is objected to or not, direct the costs of any pleading, affidavit, evidence, notice to cross-examine witnesses, account, statement, or other proceeding, or any part thereof, which is improper, unnecessary, or contains unnecessary matter, or is of unnecessary length, to be disallowed, or may direct the taxing officer to look into the

same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, or to contain unnecessary matter, or to be of unnecessary length; and in such case the party whose costs are so disallowed shall pay the costs occasioned to the other parties by such unnecessary proceeding, matter, or length; and in any case where such question shall not have been raised before and dealt with by the Court or judge, the taxing officer may look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

19. In any case in which, under the preceding rule No. 18, or any other rule of Court, or by the order or direction of a Court or judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

20. Where in the Chancery division any question as to any costs is under the preceding rule 18 dealt with at chambers, the chief clerk is to make a note thereof, and state the same on his allowance of the fees for attendances at chambers, or otherwise as may be convenient for the information of the taxing officer.

21. Where any party appears upon any application or proceeding in Court or at chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance unless the Court or judge shall expressly direct such costs to be allowed.

22. As to applications to extend the time for taking any proceeding limited by Rules of Court (subject to any special order as to the costs of and occasioned by any such application), the costs of one application are, without special order, to be allowed as costs in the cause or matter.

but (unless specially ordered) no costs are to be allowed of any further application to the party making the same as against any other party, or any estate or fund in which any other party is interested.

23. The taxing officers of the Supreme Court, or of any division thereof, shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been performed by any of the masters, taxing masters, registrars, or other officers of any of the courts whose jurisdiction is by the Act transferred to the High Court of Justice or Court of Appeal, and shall, in respect thereof, have such powers and authorities as previous to the commencement of the Act were vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a judge.

24. The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested.

25. When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

26. As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which

appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party.

27. As to any work and labour properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed.

28. The rules, orders, and practice of any Court whose jurisdiction is transferred to the High Court of Justice or Court of Appeal, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs, existing prior to the commencement of the Act, shall, in so far as they are not inconsistent with the Act, and the Rules of Court in pursuance thereof, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal.

29. As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances.

30. Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any item or items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the item or items, or parts or part thereof, objected to, and may thereupon apply to the taxing officer to review the taxation in respect of the same.

31. Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and

he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

32. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to as aforesaid, may apply to a judge at chambers for an order to review the taxation as to the same item or part of an item, and the judge may thereupon make such order as to the judge may seem just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

33. Such application shall be heard and determined by the judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof, unless the judge shall otherwise direct.

34. When a writ of summons for the commencement of an action shall be issued from a district, and when an action proceeds in a district registry, all fees and allowances, and rules and directions relating to costs, which would be applicable to such proceeding if the writ of summons were issued in London, and if the action proceeded in London, shall apply to such writ of summons issued from and other proceedings in the district registry.

CAIRNS, C.
A. E. COCKBURN.
G. JESSEL.
COLERIDGE.
FITZROY KELLY.
W. M. JAMES.
GEORGE MELLISH.
RICHD. MALINS.
JAMES BACON.
CHARLES HALL.
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COLIN BLACKBURN.

JOHN MELLOR.
ROBT. LUSH.
WM. BALIOL BRETT.
A. CLEASBY.
W. R. GROVE.
J. R. QUAIN.
JAMES HANNEN.
C. E. POLLOCK.
W. V. FIELD.
J. W. HUDDLESTON.
NATHAN L. LINDLEY.

AT THE COURT AT OSBORNE HOUSE,
ISLE OF WIGHT.

The 12th day of August, 1875.

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL,

Whereas by "The Supreme Court of Judicature Act, 1873," it is enacted that it shall be lawful for Her Majesty, by Order in Council, from time to time to direct that there shall be District Registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are herein-after mentioned; and Her Majesty may thereby appoint that any Registrar of any County Court, or any Registrar or Prothonotary or District Prothonotary of any local Court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a District Registrar of the Court of Probate, or of the Admiralty Court, shall under this Act become and be a District Registrar of the said High Court of Justice, or who shall hereafter be appointed such District Registrar, shall and may be a District Registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are herein-after mentioned:

And whereas by "The Supreme Court of Judicature Act, 1875," it is provided that where any such Order has been made, two persons may, if required, be appointed to

perform the duties of District Registrar in any district named in the Order, and such persons shall be deemed to be joint District Registrars, and shall perform the said duties in such manner as may from time to time be directed by the said Order, or any Order in Council amending the same :

And whereas it has seemed fit to Her Majesty, by and with the advice of Her Privy Council, that there should be District Registrars in certain places in England : Now, therefore, Her Majesty, by and with the advice aforesaid, is pleased to order, and it is hereby ordered, as follows:—

That there shall be District Registrars in the places of Liverpool, Manchester, and Preston, and the District Registrar at Liverpool of the High Court of Admiralty, and the District Prothonotary at Liverpool of the Court of Common Pleas at Lancaster shall be and are hereby appointed the District Registrars in Liverpool ; and the District Prothonotary at Manchester of the said Court of Common Pleas shall be and is hereby appointed the District Registrar in Manchester ; and the District Prothonotary at Preston of the said Court of Common Pleas shall be and is hereby appointed the District Registrar at Preston ; and that the district for each such place shall be the district now assigned to each such District Prothonotary, under the provisions and authority of “The Common Pleas at Lancaster Amendment Act, 1869.”

That there shall be a District Registrar in Durham, and that the District Prothonotary of the Court of Pleas at Durham shall be and is hereby appointed the District Registrar in Durham ; and that the district shall be the district, for the time being, of the County Court holden at Durham.

That, in the places mentioned in the Schedule annexed, there shall be District Registrars, and that the Registrar of the County Court held in any such place shall be and is hereby appointed the District Registrar in such place, and that the district for each such place shall be the district, for the time being, of the County Court holden at such place.

C. L. PEEL.

SCHEDULE.

Bangor.	Kingston-on-Hull.
Barnsley.	Kings Lynn.
Barnstaple.	Leeds.
Bedford.	Leicester.
Birkenhead.	Lincoln.
Birmingham.	Lowestoft.
Boston.	Maidstone.
Bradford.	Newcastle-upon-Tyne.
Bridgewater.	Newport, Monmouth.
Brighton.	Newport, Isle of Wight.
Bristol.	Newtown.
Bury St. Edmunds.	Northampton.
Cambridge.	Norwich.
Cardiff.	Nottingham.
Carlisle.	Oxford.
Carmarthen.	Pembroke Docks.
Cheltenham.	Peterborough.
Chester.	Poole.
Colchester.	Portsmouth.
Derby.	Ramsgate.
Dewsbury.	Rochester.
Dover.	Sheffield.
Dorchester.	Shrewsbury.
Dudley.	Southampton.
East Stonehouse.	Stockton-on-Tees.
Exeter.	Sunderland.
Gloucester.	Swansea.
Great Grimsby.	Truro.
Great Yarmouth.	Totnes.
Halifax.	Wakefield.
Hanley.	Walsall.
Hartlepool.	Whitehaven.
Hereford.	Wolverhampton.
Huddersfield.	Worcester.
Ipswich.	York.

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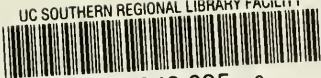
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